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Executive agents in American  
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EXECUTIVE AGENTS IN  
AMERICAN FOREIGN RELATIONS



## THE ALBERT SHAW LECTURES ON DIPLOMATIC HISTORY

By the liberality of Albert Shaw, Ph.D., of New York City, the Johns Hopkins University has been enabled to provide an annual course of lectures on Diplomatic History. The lectures are included in the regular work of the Department of History and are published under the direction of Professor John H. Latané.



THE ALBERT SHAW LECTURES ON  
DIPLOMATIC HISTORY, 1923

# Executive Agents In American Foreign Relations

HENRY MERRITT WRISTON

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To a loved  
Society of Scholars and Good Fellows,  
the Faculty of Wesleyan University.



# CONTENTS

	PAGE
PREFACE.....	xi
PART I. ORIGIN AND CONSTITUTIONAL POSITION.....	1
CHAPTER	
I. PRACTICE TO 1789.....	3
II. CONSTITUTIONAL BACKGROUND.....	27
III. THE CONSTITUTIONAL POSITION OF EXECUTIVE DIPLOMATIC AGENTS.....	106
IV. CONGRESSIONAL OPINION REGARDING EXECUTIVE AGENTS.....	205
PART II. RANGE OF PRACTICE.....	313
V. AGENTS SENT TO OPEN RELATIONS.....	315
VI. AGENTS TO COUNTRIES WITH WHICH THE UNITED STATES HAD BROKEN OFF RELATIONS.....	368
VII. AGENTS TO UNRECOGNIZED STATES AND GOVERNMENTS.....	406
VIII. AGENTS TO COLONIAL AND* DEPENDENT STATES.....	526
IX. AGENTS TO INTERNATIONAL CONFERENCES....	572
X. AGENTS TO COUNTRIES WHERE THE UNITED STATES HAD NO REGULAR DIPLOMATIC OFFICERS.....	619
XI. AGENCIES GROWING OUT OF THE NATURE OF THE BUSINESS.....	692
INDEX.....	839





## P R E F A C E

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This study was undertaken several years ago as an enterprise in scholarship. It was designed to contribute something in a field which then seemed to me astonishingly neglected. However well or ill it may fulfill that ambition, it long since became an enterprise in friendship.

My first and deepest obligation is to Mr. David A. Salmon, Chief of the Bureau of Indexes and Archives in the Department of State. At a time when scholars were not given many facilities in the Department, his interest and enthusiasm, his courtesy, as well as his wide and accurate knowledge, were of inestimable service. Without his interest the work could never have been carried on effectively.

When Mrs. Madden Summers took charge of the archive room she also showed a lively interest. Her industrious, intelligent, and sympathetic help have made easy many tasks which would otherwise have been very difficult. Dr. Tyler Dennett, a valued friend and the editor of the Department of State, has, in like manner, been of great service.

I undertook to write about executive agents at the suggestion of my then colleague, Professor George M. Dutcher, of Wesleyan University. He has been

teacher, colleague, and always a loyal friend and expert adviser. To Dr. William J. James, the Librarian of Wesleyan University, and to the Assistant Librarian, Miss Eugenia M. Henry, I am indebted for more services than could be enumerated. Parts of the manuscript have been read by Professor G. G. Wilson, of Harvard; by Dr. Worthington C. Ford, who made valuable suggestions about the early section of the book; by Professor George H. Blakeslee, of Clark University, and by Miss Henry. To Dr. Albert Shaw, the donor of the lectureship at Johns Hopkins, I am obligated for steady encouragement; his consistent interest has been a genuine aid. The patience and persistence—and the forbearance—of Dr. John H. Latané are responsible for the final appearance of the volume. A grant from the Carnegie Foundation for International Peace, Division of International Law, made possible residence of many months in Washington and access to the most important sources.

Miss Ruth Sandborn has spent a year as research assistant, putting the book in form for the press. She also prepared the index. Her intelligence, zeal, and loyalty cannot be adequately reflected in this brief mention of her service.

These and many others have made the collection of much detailed information and its organization in the present form an interesting and pleasant enterprise.

HENRY M. WRISTON.

Appleton, Wisconsin,  
February 11, 1929.

PART I

ORIGIN AND CONSTITUTIONAL POSITION



## CHAPTER I

### PRACTICE TO 1789

Executive agents used in the conduct of American foreign relations are especially worthy of study because of a peculiarity in the constitutional structure of the United States. The executive in Europe is, generally speaking, untrammelled in making appointments. The President, on the other hand, is limited in matters of appointment by the Senate. This study seeks to discover how far the executive power in the United States has been able to move outside that trammel in its conduct of foreign relations. Chief emphasis must fall, inevitably, upon the period since the present Constitution was adopted. But the period prior to 1789 has a bearing, because at that time, also, the organization of the executive power in America was very different from that of European states. It was embodied in Congress as a whole, and exercised by Congress or by its creatures. The subordinate bodies created by Congress had very little independent power, and it is instructive to observe how far they were able to go in developing the use of agents without the explicit consent of Congress in individual cases.

In the early stages of the Revolution, Congress exercised, without specific authorization, control over foreign affairs,<sup>1</sup> though individual states continued to

<sup>1</sup> Chase, C. J., in *Ware v. Hylton*, 3 Dallas 199, 231.

send men abroad on state business. A Committee of Secret Correspondence was created by Congress on November 29, 1775.<sup>2</sup> In carrying on its work, the committee employed persons analogous to the executive agent of a later day. They were persons without official status, charged, nevertheless, with public business.

One of the first acts of the committee was to write to Arthur Lee. This was entirely natural, for Lee had been in England nearly ten years; he was one of the colonial agents, a vigorous protagonist of the American cause, and highly connected in America. He had already been in correspondence with the Continental Congress.<sup>3</sup> The committee wrote, December 12, 1775: "*It would be agreeable to Congress to know the disposition of foreign powers toward us, and we hope this object will engage your attention. We need not hint that great circumspection and impenetrable secrecy are necessary. The Congress rely on your zeal and abilities to serve them, and will readily compensate you for whatever trouble and expense compliance with their desire may occasion. We remit you for the present £200.*"<sup>4</sup> He served under these instructions until notified in December, 1776, of his formal appointment as joint commissioner with Franklin and Deane in Paris.

<sup>2</sup> Journals of the Continental Congress, ed., W. C. Ford and G. Hunt (Washington, 1904-1914), III, 392.

<sup>3</sup> Calendar of Lee Manuscripts, 7.

<sup>4</sup> F. Wharton, *The Revolutionary Diplomatic Correspondence of the United States* (Washington, 1889), II, 63-64; R. H. Lee, *Life of Arthur Lee* (Boston, 1829), I, 53.



Like nearly everything else he did, this mission has become a subject of controversy. Lee's nephew and biographer makes much of his work under these instructions; Wharton minimizes it.<sup>5</sup> It is not necessary to go into the controversy. Certain it is that Lee was in contact with Vergennes,<sup>6</sup> the foreign minister of France, and after Deane's arrival in Paris he was active in collecting intelligence and forwarding it to the committee through Silas Deane. Lee went to Paris in August, 1776. Deane had looked forward to the conference with pleasure, but it resulted unfortunately, and Deane was considerably embarrassed as a result. Lee desired Deane to become the channel for transmitting his suspicions and accusations against various people to Congress,—a desire which Deane declined to gratify.<sup>7</sup> The Lee genius for embroilment was manifest throughout this period. It was inherited by his biographer, who made matters worse. His services were valuable, and by no means devoid of danger, but the effort to magnify them at the expense of others produced a strong reaction.<sup>8</sup>

Another agent of the Committee of Secret Correspondence was Charles William Frederick Dumas. He

<sup>5</sup> *Ibid.*, 54; Wharton, *Rev. Dip. Corr.*, I, 522-523.

<sup>6</sup> *Calendar of Lee Manuscripts*, 7.

<sup>7</sup> *Deane Papers*, ed. C. Isham (New York Historical Collections, 1886-1890), I, 226.

<sup>8</sup> Lee, *Lee*, I, 58; Wharton, *Rev. Dip. Corr.*, I, 523; *Letters of William Lee*, ed. W. C. Ford (Brooklyn, 1891), I, 51; *Deane Papers*, I, 220, 221, 304.

was a native of Switzerland, who lived a good portion of his life in Holland, and who by his friendship for Benjamin Franklin, enthusiasm for the American cause, familiarity with several languages, and also by his knowledge of international law, commended himself as a proper person to represent American interests in Europe.<sup>9</sup> He had already been in correspondence with Franklin, and after the organization of the committee he was requested, "as you are situated at the Hague, where ambassadors from all courts reside," to "make use of the opportunity which that situation affords you of discovering if possible, the disposition of the several courts with respect to such assistance or alliance, if we should apply for one or propose for the other." He was directed to use Franklin's letter as his "credential," but charged to keep it secret from the English ambassador.<sup>10</sup>

Dumas accepted the task,<sup>11</sup> dealt with the French minister on behalf of Congress under cloak of secrecy and with disguised names, and carried on a voluminous correspondence with other American agents in Europe and England as well as with the committee at home. His remuneration was slender and he appealed repeatedly for a better allowance, urging that he had given up other sources of income. He wrote that he drew 200 louis d'ors yearly on which, with much economy, he could live in a style of mediocrity. Likewise, he

<sup>9</sup> Wharton, *Rev. Dip. Corr.*, I, 603.

<sup>10</sup> *Ibid.*, II, 65.

<sup>11</sup> *Ibid.*, 86.

appealed to Congress from time to time for a "formal confirmation" of his agency, for a "letter of credence," for a commission as "chargé d'affaires." Despite the recommendations of Franklin and others, however, his appeals went unheeded.<sup>12</sup>

Silas Deane was the most important special agent of this period. His activity in the Connecticut Committee of Secret Correspondence, his industrious service in Congress, and in its secret and other committees made him a natural choice for service abroad when he was not returned to Congress at the close of 1775. He was selected by the committee and given a commission "to go into France, there to transact such business, commercial and political, as we have committed to his care, in behalf and by authority of the Congress."<sup>13</sup> His instructions were not laid before Congress and his credential was signed only by the committee.

The mission was secret. Deane was to appear in France "in the character of a merchant, . . . it being probable that the court of France may not like it should be known publicly that any agent from the colonies is in the country."<sup>14</sup> The mercantile character of his business was not all assumed, for like other notable Revolutionary figures, Deane mingled private gain with public business. Nor was the secret kept. Edward Bancroft, himself an agent of the committee, was in intimate contact with Deane, fully informed of his

<sup>12</sup> Ibid., 305, 866, 867; III, 72.

<sup>13</sup> March 2, 1776; Deane Papers, I, 119.

<sup>14</sup> Wharton, Rev. Dip. Corr., II, 78.

every move, and reported the whole to the British ministry.<sup>15</sup> Even had Bancroft neglected to recount in such detail the objects and proceedings of Deane, enough other sources of information were open so that very little of his doings would have remained secret.<sup>16</sup>

France being the next friend to the colonies, the agent to France was naturally the center of activity and correspondence. Deane corresponded assiduously with Bancroft, Arthur Lee, Dumas and others. He served as a clearing house for the diplomatic business of the colonies in Europe. Deane employed William Carmichael as an assistant and interested himself in such matters as rousing the Caribs and the negroes of Jamaica to revolt. His dealings with Vergennes and Beaumarchais, his activities in securing arms, in sending French volunteers, in making the tentative moves looking toward French recognition and alliance, and his reports on trade opportunities are all familiar. During the period from May 4, 1776, when he arrived, until the arrival of Franklin and a regular commission, in December, Deane was the mainstay of the American cause at the most critical point in Europe.<sup>17</sup>

Edward Bancroft, the third secret agent of the committee, was employed through Deane. The instruc-

<sup>15</sup> Aug. 14, 1776, B. F. Stevens, *Facsimiles of Manuscripts in European Archives relating to America, 1773-1783* (London, 1899), No. 890.

<sup>16</sup> Stevens, *Facsimiles*, show how successfully the American agents were spied upon.

<sup>17</sup> The account of his work may be followed in Wharton, but even better in Deane Papers, I.

tions to Deane, at Franklin's instance, had directed him to get in touch with Bancroft, have him come to Paris for a conference, and establish a connection.<sup>18</sup> There was a natural basis for this contact inasmuch as Bancroft had been a pupil of Deane years before.<sup>19</sup> Deane made haste to meet Bancroft, and from that time forward Bancroft was continuously in confidential relations with the American emissaries to France.<sup>20</sup> Bancroft was an adventurer. He ran away from Westfield, Massachusetts, and went to sea. He picked up a medical education and practiced in Surinam and Guiana. Six or seven years before the Revolution he turned up in London and published a book on the natural history of Guiana. At this time he became associated with Franklin and laid the foundations of a confidence which defied all shaking. Stock gambler, land speculator, physician, naturalist, political spy, publicist, dye manufacturer—certainly a man of unusual parts.<sup>21</sup> Being on terms of intimacy with leading men in England, he was in a position to give Deane valuable information, and did so. Being an adventurer with an eye to the main chance, he was willing to sell to the British ministry what he learned from Deane, and did so. Informers are notoriously unfaithful. But Bancroft is almost unique in the success with

<sup>18</sup> *Ibid.*, 126.

<sup>19</sup> E. Bancroft, *A Narrative of the Objects and Proceedings of Silas Deane*, ed. P. L. Ford (Brooklyn, 1891), 5.

<sup>20</sup> Wharton, *Rev. Dip. Corr.*, I, 621; Deane Papers; etc.

<sup>21</sup> Bancroft, *Narrative*.

which he played a double game. Naturally, the English, having bought him, knew he could be bought, trusted him least, and watched him most carefully. The Americans, in the face of indications of his perfidy, were thoroughly duped.<sup>22</sup>

A number of other agents of the committee may be mentioned. Jonathan Loring Austin was a Harvard graduate and a major in the Revolutionary forces who "acted as secretary to Franklin, and occasionally as his secret agent in England, until 1779, when he was sent to Philadelphia with dispatches from the Commissioners."<sup>23</sup> William Bingham, who had been secretary of the Committee of Secret Correspondence, was despatched to France in June, 1776, and directed to go from there to Martinique to procure arms and otherwise advance American interests. His able and effective work won the warm approval of John Jay.<sup>24</sup> William Hodge, a "zealous but indiscreet" young man, was another agent of the committee.<sup>25</sup> Thomas Story was sent, December 13, 1775, to France, Holland and England.<sup>26</sup> He served as despatch bearer, but of an

<sup>22</sup> Evidence of his perfidy came out through Stevens, Facsimiles. William Lee had accused Bancroft, but Franklin and Deane were convinced of his honesty.

<sup>23</sup> Wharton, *Rev. Dip. Corr.*, I, 342, 620.

<sup>24</sup> Deane Papers, I, 137; Wharton, *Rev. Dip. Corr.*, I, 25; III, 449.

<sup>25</sup> Deane Papers, I, 302 ff.; Wharton, *Rev. Dip. Corr.*, I, 133, for index of correspondence; Stevens, Facsimiles, No. 327.

<sup>26</sup> P. Force, *American Archives . . . a Documentary History of . . . the North American Colonies* (Washington, 1837-1853), Fifth Series, II, 817-818; *American Quarterly Review*, I, 132.



unusually confidential character, inasmuch as the danger of letters being seized caused many despatches to be transmitted verbally. Story was a medium for the exchange of opinion among the American agents.<sup>27</sup>

There were also commercial agents of the committee. Robert Morris had his half-brother, Thomas, designated "superintending agent" over all the business concerns of the committee in Europe. This was done in the hope that Thomas had abandoned his wild ways and was ready to settle down to a useful career. The hope was vain. Deane, who had been requested to report on his conduct, was compelled to write Robert Morris that far from being an aid, Thomas was a bar to effective work.<sup>28</sup> William Lee was also employed as joint agent with Morris for this business. This member of the famous Virginia family, who had been in business and politics in London, was as highly sensitized as the rest. He was an important man in London, being an alderman. He had been loyal to the American cause—so active in its behalf that it was remarkable that he was permitted to be at liberty. He felt, when he received notice of his appointment in April, 1777, that he was entitled to a free hand and to proper respect. Proceeding to France, he was disturbed by the condition created by the misbehavior of Thomas Morris and outraged by finding a nephew of Franklin in actual charge at Nantes. Lee became

<sup>27</sup> Wharton, *Rev. Dip. Corr.*, II, 82-85.

<sup>28</sup> Deane Papers, I, 331, etc.; Wharton, *Rev. Dip. Corr.*, I, 196; Letters of William Lee, I, 45, 52 ff.

quarrelsome and one of the feuds connected with the names of William and Arthur Lee ripened quickly. His service in this capacity was brief, being ended in October, 1777.<sup>29</sup>

The men mentioned do not comprise a complete list of the agents of the Committee of Secret Correspondence. But they illustrate sufficiently the characteristics of the group. They were informal, unofficial, and secret agents of the body which had foreign relations in its immediate charge. The authority of the committee rested on the power, conferred by Congress, to "correspond with our friends in Great Britain, Ireland and other parts of the world," for which Congress agreed "to defray all such expenses as may arise by carrying on such correspondence, and for the payment of such agents as they may send on this service."<sup>30</sup> Employment of such agents made possible the exchange of views with governments which could not deal openly with American representatives lest they be prematurely committed. An additional reason for the use of this form of agent was that the colonies had not declared their independence. That this was not the only reason, however, is shown by the fact that this type of agent continued to be employed after the Declaration of Independence and after formal commissions were sent to Europe. Indeed, this type of agent is very common now, as it was then. France had sent agents of similar character to the United States. Tentative

<sup>29</sup> Letters of William Lee, I, 45-59, 199-254.

<sup>30</sup> Jol. Cont. Cong., III, 392.

advances to the colonies had been made through Achard Bonvouloir.<sup>31</sup> He had been in America in a private capacity and then offered his services to the French government. His instructions were verbal, and his mission extremely informal. Arriving in Philadelphia late in 1775, he got in touch with the Committee of Secret Correspondence, won their confidence, and conveyed intimations of French friendship and aid. On the basis of his guarded suggestions Deane was sent to France.<sup>32</sup>

From the secret and unofficial missions, it is necessary to differentiate sharply the public commissioners who were sent abroad. In the cases of these latter the procedure was wholly different. They were elected by Congress, and held regular commissions, the form and authority of which Congress specifically approved, and which were signed by the officers of Congress. Their instructions were drafted by a committee of Congress, which was not necessarily or even usually the Committee of Secret Correspondence or its successor, the Committee of Foreign Affairs, but they had to be approved formally by Congress, and were frequently altered by that body. Finally, they were allowed a fixed stipend determined by the whole Congress.

One or two illustrations will serve to emphasize these differences. After a plan for treaties had been

<sup>31</sup> Bonvouloir was not the first agent from France. There had been one in 1765, and another in 1768.

<sup>32</sup> Jol. Cont. Cong., IV, 8; H. Doniol, *Histoire de la Participation de la France à l'Établissement des États-Unis* (Paris, 1886-1899), I, 268, 269, there cited.

considered by Congress and the draft of a treaty agreed upon,<sup>33</sup> as well as instructions to the commissioners who were to be sent to France, then, and not till then, were Franklin, Deane, and Jefferson elected.<sup>34</sup> A committee of four,—Robert Morris, Richard Henry Lee, George Wythe, and John Adams,—was appointed to draft letters of credence and report ways and means for their subsistence. These letters of credence were submitted to Congress, amended, then agreed to.<sup>35</sup> On Jefferson's declination, Arthur Lee was elected to serve in his place.<sup>36</sup> These men, while sent secretly, were none the less official, and were not expected to remain secret indefinitely.<sup>37</sup> When other commissioners were appointed the procedure was the same. The facts that many were secret, and that several were not officially received, do not affect their "public character."

The Committee of Secret Correspondence had exercised broad powers. On one occasion, at least, it kept the contents of important despatches secret from Congress. Speaking of a despatch from Arthur Lee, brought by Thomas Story, it said: "Considering the nature and importance of it, we agree in opinion, that it is our indispensable duty to keep it a secret, even

<sup>33</sup> Jol. Cont. Cong., V, 576 ff., 768 ff.

<sup>34</sup> Sept. 26, 1776, *ibid.*, 813 ff., 827.

<sup>35</sup> *Ibid.*, 827, 833, 834.

<sup>36</sup> *Ibid.*, VI, 897.

<sup>37</sup> *Ibid.*, V, 827.

from Congress. . . . We find, by fatal experience, the Congress consists of too many members to keep secrets.”<sup>38</sup> Even when, May 10, 1776, the committee was called upon “to lay their proceedings before Congress on Monday next” an exception was made, for they were permitted to withhold “the names of persons they have employed or with whom they had corresponded.”<sup>39</sup> The exception thus allowed evidences the fact that Congress approved the use of special agents.

The committee was destined to lose power. With the approach and passage of the Declaration of Independence, Congress showed more and more inclination to take control in its own hands. The draft of a proposed treaty was drawn, not by the already existing committee as one would expect, but by a special committee chosen June 11, 1776.<sup>40</sup> This incident was only one of many indications of the waning influence of the committee. Moreover, the loss of Franklin was a serious blow to its prestige. He had been the leading spirit, and with his departure for France the guiding hand was gone. Its personnel was much changed and it rapidly lost power.<sup>41</sup> When, December 24, 1776, Congress approached the task of representation abroad, in a comprehensive manner, a special committee was

<sup>38</sup> Force, *American Archives*, Fifth Series, II, 818.

<sup>39</sup> *Jol. Cont. Cong.*, IV, 345.

<sup>40</sup> *Ibid.*, V, 431.

<sup>41</sup> G. Hunt, *The Department of State of the United States* (New Haven, 1914), 5.

constituted "to prepare and report a plan for obtaining foreign assistance."<sup>42</sup> Its report, December 28, 1776, was debated in committee of the whole and adopted after amendment. The Committee of Secret Correspondence had nothing to do with the matter. It is true that it was given the task of drawing a commission for Franklin, but its report was given to another committee for revision before adoption.<sup>43</sup>

The change of the "style" of the committee to the Committee of Foreign Affairs, and the appointment of Thomas Paine as secretary at a salary of seventy-five dollars a month may have been intended to enhance its importance, but it did not do so in fact. It is scarcely referred to in the "Journals" for 1777, 1778, and 1779,<sup>44</sup> and its chief function was to "furnish the agents of the government abroad with accounts of the course of events in America." The members were constantly changed, and the communications reflected the opinions of those who happened to be serving at the moment. Matters having to do with foreign affairs were usually referred by Congress to special committees. May 1, 1777, less than a month after the Committee of Foreign Affairs had been instituted, James

<sup>42</sup> Jol. Cont. Cong., V, 1039.

<sup>43</sup> Ibid., VI, 1049, 1050-1058; VII, 8, 9.

<sup>44</sup> See index of "Journals" under foreign affairs, Thomas Paine, etc. The foreign affairs can be followed most easily in chronological form in the "Secret Journals." But there are many things in the "Journals," as published by the Library of Congress, that do not appear in the "Secret Journals,"—for example, the change of the committee's name.

Wilson, John Adams, and Richard Henry Lee were selected a committee to "inquire into the laws and customs of nations respecting neutrality, and to report their opinion, whether the conduct of the King of Portugal, in forbidding the vessels of the United States to enter his ports, and ordering those already there to depart at a short day is not a breach of the laws of neutrality." Inquiries of this character, it might reasonably be expected, should have fallen within the functions of the Committee of Foreign Affairs, but they rarely did so.

By the beginning of 1779 matters had reached the point of utter demoralization. The committee system, as a method of managing foreign relations, had broken down. American commissioners abroad had engaged in acrimonious discussion in which charges were so freely bandied about that not a single man but had an accusation of some sort lodged against him. An investigation was ordered on January 20, 1779, and the whole matter aired in Congress. The secretary of the Committee of Foreign Affairs was involved and dismissed, and for nearly five months Congress was threshing the problem.<sup>45</sup> In these circumstances the Committee of Foreign Affairs could not be expected to have either the authority or the vitality to employ agents of its own.

During the year 1780 only very feeble moves were made in the direction of creating a Department of

<sup>45</sup> Jol. Cont. Cong., XIII, 93; and see index, *ibid.*, XV, under foreign affairs, for the course of the investigation.



Foreign Affairs, and it was not until 1781 that anything approaching serious consideration was given the question. The report of a committee appointed to consider the matter was presented by James Duane. It recognized that "the most effectual mode of conducting the business of the Department for foreign affairs would be thro' a Minister vested with Confidential powers after the example of other nations," but it knew that could not be obtained and recommended a much more feeble substitute.<sup>46</sup> The secretary had as one of his duties "to correspond with the ministers of the United States at foreign courts, and with the ministers of foreign powers and other persons, for the purpose of obtaining the most extensive and useful information relative to foreign affairs, . . . also to transmit such communications as Congress shall direct, to the ministers of these United States and others at foreign courts, and in foreign countries."

The energy which Congress expended in adopting the plan in January, 1781, used up its available supply. It was not until August 10, several months after the Articles of Confederation had gone into force, that a secretary was elected. Robert R. Livingston was commissioned October 1, 1781. He was now the agent of the formal treaty-making power, for Article IX of the Confederation provided that "the United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, . . . of sending and receiving ambassadors . . . entering into

<sup>46</sup> Jol. Cont. Cong., XIX, 43-44.



treaties and alliances," with certain provisions and exceptions.<sup>47</sup> Congress, however, did not allow its agent to exercise important powers. Diplomatic questions continued to be referred to specially appointed committees, and Congress handled directly not only broad matters of policy but details as well. Livingston complained that in his correspondence he was much limited, for he could only reflect in his letters the things which Congress had declared by a public act, whereas it was often requisite to say things in his communications abroad which it would be impolitic or improper for Congress publicly to endorse. It was requisite, also, that he be given authority to deal with matters of too trivial character to deserve the attention of Congress.<sup>48</sup>

Livingston's protest led to a reorganization of the department by resolution on February 22, 1782. This changed his title to "Secretary of the United States of America for the Department of Foreign Affairs." He was empowered to correspond not only with the ministers, consuls, and agents of the United States in foreign countries, and with the ministers and other officers of foreign powers in this country, but also "with all other persons from whom he may expect to receive useful information relative to his department."<sup>49</sup>

<sup>47</sup> F. N. Thorpe, *Constitutions, . . . Charters, and . . . Organic Laws of . . . America* (Washington, 1909), I, 12.

<sup>48</sup> Hunt, *Department of State*, 19.

<sup>49</sup> *Jol. Cont. Cong.*, XXII, 87-92.

The reorganization did extend Livingston's powers, but it also defined them. In particular it made clear that instructions to ministers on "great national subjects" should be submitted to the inspection and receive the approbation of Congress before transmission. Furthermore, the substance of "all letters to foreign powers, letters of credence, plans of treaties, conventions, manifestoes, instructions, passports, safe conducts," and the like must originate in congressional action, and simply be "reduced to form in the office of foreign affairs," and then again be "submitted to the opinion of Congress." In short, the position carried no broad powers, and "far from being considered as the head of the diplomatic service of the United States, the Secretary was for several years treated little better than a congressional clerk."<sup>50</sup> It must be said, too, that Livingston did not make the most of his position; he was unwilling to badger Congress by insistence upon his prerogatives and was too deferential in his attitude and too deprecatory in his manner to become the leading figure that Jay became. In any event, his letters do not indicate that he corresponded on diplomatic business with any unofficial person whom he might have appointed.

The feebleness of Congress in the conduct of foreign affairs and its poor opinion of the secretariat is seen in the long delay which intervened between Livingston's

<sup>50</sup> J. F. Jameson, *Essays in the Constitutional History of the United States in the Formative Period, 1775-1789* (Boston, 1889), 162-163.

retirement and Jay's assumption of office. Livingston, after repeated suggestions of his intentions, resigned in December, 1782, though he did not retire until June, 1783. It was not until May 7, 1784, that Jay was elected his successor, and he did not qualify until December 21, 1784. Thus for eighteen months there was no Secretary of Foreign Affairs. During this long interim the papers were sealed up and the undersecretary, having no authority to act, quit the office. Thus the archives were useless so far as Congress was concerned, and the clerks familiar with the details of foreign correspondence were not on hand.<sup>51</sup> So despite the election of a new undersecretary, the department was in fact nonexistent.<sup>52</sup>

John Jay approached the office with the notion that it was a position of dignity and importance. He was not complacent in the face of congressional neglect and more than once showed his irritation and impatience with the situation.<sup>53</sup> The office did increase in importance, and Jay's prestige advanced, so that in the last days of the Confederation he wielded an important influence over Congress. In most matters, however, the department was still under the thumb of Congress, as is aptly illustrated by his difficulties in the Spanish negotiations. When Congress authorized Jay to negotiate with the Spanish chargé, it called upon him to present to Congress every proposition that should be

<sup>51</sup> Hunt, *Department of State*, 40.

<sup>52</sup> *Ibid.*, 43.

<sup>53</sup> See Jameson, *Essays in Constitutional History*, 165.

made during the course of negotiation. It was only after protest by the secretary that some modification in this requirement was made.<sup>54</sup>

On the other hand, Jay was bolder in use of power than Livingston. He did not appoint persons to act solely as special agents, but he did take occasion to correspond on the subject of foreign affairs with persons other than regular officials of the United States. One of his correspondents was Lafayette. Almost immediately upon his arrival in Paris, Lafayette wrote to Jay concerning the European situation in a manner which is evidence that he had been requested to correspond.<sup>55</sup> Jay in answering on July 15, 1785, said, "Accept my thanks for your interesting letter of the 19th of March which was immediately communicated to Congress. Let me request the continuance of your correspondence."<sup>56</sup> After this Jay and Lafayette conducted an active correspondence.<sup>57</sup> In one of his letters Lafayette gave an account of the "sentiments and opinions respecting the United States" which prevailed in Germany, where he had been visiting several courts. Jay wrote that he could easily conceive that "at the German Courts you visited, you have done us service,

<sup>54</sup> S. B. Crandall, *Treaties, their Making and Enforcement* (2d ed., Washington, 1916), 26; Hunt, *Department of State*, 48.

<sup>55</sup> J. Sparks, *the Diplomatic Correspondence of the United States of America* (Washington, 1833-1834), I, 419.

<sup>56</sup> *Correspondence and Public Papers of John Jay*, ed. H. P. Johnston (New York, 1890-1893), III, 160.

<sup>57</sup> Lafayette wrote April 18, Sept. 6, 1785, and Feb. 11, 1786.

because I know how able, as well as how willing you are to do it. I wish all who speak and write of us were equally well-informed and well-disposed.”<sup>58</sup> In this correspondence Lafayette remarked, “I have not for a long time had the honor to address you either in public or private letters.” This, taken with the fact that Jay invariably submitted the letters to Congress, and the frequency of the letters, indicates that Lafayette was something more than a casual correspondent.<sup>59</sup>

It is interesting, in connection with the submission of Lafayette’s letters to Congress, to observe that Jay regarded this as a serious limitation upon the value of the correspondence. Congress never could keep any matter strictly confidential; someone always babbled. “These circumstances must undoubtedly be a great restraint on those public and private characters from whom you would otherwise obtain useful hints and information. *I for my part have long experienced the inconvenience of it, and in some instances very sensibly.*”<sup>60</sup>

<sup>58</sup> Jay, Correspondence, III, 200-201; and see Lafayette to Jefferson, Sparks, Dip. Corr., I, 434; and to Jay, *ibid.*, 439 ff. This correspondence does not indicate, however, that Jay requested Lafayette to make the trip, or suggested either a line of conduct or a body of argument.

<sup>59</sup> It is a pertinent fact that though they were friends, there was little correspondence between Jay and Lafayette save in this period. On the other hand, Lafayette had a very deep interest, was a privileged character, and would be likely to correspond with those in official position.

<sup>60</sup> Jay to Jefferson, April 24, 1787, Jay, Correspondence, III, 243.

In the printed sources no absolute proof appears that Jay as secretary for the Department of Foreign Affairs used his close friend, Gouverneur Morris, as a special agent when the latter went to France on business. There are hints, however, that such was the case.<sup>61</sup> In a letter to Jay, July 1, 1789, Morris said, "I am too much occupied to find time for the use of a cipher, and in effect, the government here is so much occupied with their own affairs, that in transmitting to you a letter under an envelope there is no risk." He would hardly have been in possession of a cipher unless he had had an understanding with Jay on the matter of a confidential correspondence. What the terms of the understanding were it is impossible to say. Certain it is that Morris had unusual opportunities for gaining information and that he transmitted much of it to Jay.<sup>62</sup> Apparently he continued with Washington a correspondence he had begun with Jay. It is suggestive, also, that Washington sent his letter to Gouverneur Morris concerning his unofficial mission to England, while Jay was exercising the functions of Secretary of State under Washington, before the arrival of Jefferson.<sup>63</sup>

<sup>61</sup> Roosevelt does not mention the fact in his biography of Morris, and neither does Sparks.

<sup>62</sup> See J. B. Moore, *A Digest of International Law* (Washington, 1906), IV, 489.

<sup>63</sup> The fact that the Morris mission was suggested by Hamilton does not materially affect this statement. *American Journal of International Law*, XVIII, 466.



The period of the Confederation was not without secret agencies. When in 1785 a treaty was negotiated with Morocco, Thomas Barclay was a secret emissary to conduct the business. He was not appointed by the Secretary of Foreign Affairs, however, but was selected and despatched by Adams and Jefferson, who approved his work at Paris.<sup>64</sup> This also has its counterpart in the period after 1789. For several years, as is well known, ministers appointed their own attachés, and when the minister was to be absent from his post he designated his own deputy. David Humphreys, moreover, when commissioned to negotiate with Algiers in 1795, was permitted to name Joseph Donaldson, Jr., as his deputy to do the work;<sup>65</sup> and the next year, in the same manner, he employed Joel Barlow to negotiate with Tripoli.<sup>66</sup>

The period prior to the establishment of the government under the Constitution has been reviewed. It is evident that the employment of private persons in official business was by no means unknown. The Committee of Secret Correspondence in its early and more vigorous days relied upon unofficial envoys, even for important negotiations. With the progress of the Revolution the need became less, and the vigor of Congress and its committees declined; anything that might be called practice disappeared. When Jay took office, however, there were evidences of revival. His infor-

<sup>64</sup> Congressional Debates, 21 Cong. 2 Sess., VII, 254.

<sup>65</sup> Ibid., 254, 298.

<sup>66</sup> Ibid., 255, 298.

mal correspondents were employed simply as gatherers of information—to keep him in touch with matters which might not, or could not, come under the observation of the regular diplomatic officials, or within the scope of the regular diplomatic correspondence.

The whole period is one in which the executive was in a state of eclipse. It is not surprising, therefore, that manifestations of power typically executive should have been rare. In moments of crisis the committee system was capable of executive action; in that moment special agents were employed. But the committee system was weak in handling routine, and got weaker as time passed. Its executive quality disappeared, leaving it only an investigating body, or a mere burial vault for questions which the parent body did not care to face. Such was the history of the Committee of Foreign Affairs. With its decline agents of the committee practically disappeared from sight. Then the executive gradually emerged from eclipse. The advent of a strong and determined man began a revival of executive agents. With the organization of the new government in 1789, the revival was rapid and practice went far beyond the precedents established in Revolutionary days.



## CHAPTER II

### CONSTITUTIONAL BACKGROUND

#### I. *The Constitutional Convention*

The Constitution does not deal at length or in a connected way with foreign affairs. There is provision for making treaties, for appointment of ambassadors, ministers, and consuls, and for reception of diplomatic representatives from other countries; the power to make war is assigned to Congress. These several provisions do not all occur at one place in the Constitution. There is no clear partition of power, and no precise statement where the initiative is supposed to rest. The debates in the Convention that framed the Constitution do not reveal any earnest or connected discussion of this important question. Mention of the matter is incidental to arguments about an executive council, or the "principal officers" of the executive departments, or the treaty-making power. Slight attention appears to have been given to the direction of the vast mass of diplomatic business which has little or no relation to the making of treaties, and which now constitutes the bulk of the work of the Department of State. Precisely what the intention of the framers may have been upon this very thorny question it is impossible to say. Careful review of the proceedings of the Convention makes possible some conclusions.

The first proposal put before the Convention was the Virginia plan. It did not mention the conduct of foreign affairs or the treaty-making power.<sup>1</sup> The framers of that plan probably assumed that control of these matters would remain in legislative hands. Evidence on this point is largely of a negative character, yet, in its sum, it is convincing. Where changes were to be made in the system then in vogue, they were mentioned. The absence of any reference to foreign affairs is presumptive evidence that no change in the management of that branch of government business was contemplated. It is true that the plan provided for a "National Executive" which, "besides a general authority to execute the National laws, . . . ought to enjoy the Executive rights vested in Congress by the Confederation."<sup>2</sup> But the executive which the Virginia delegation had sketched was not a vigorous and independent branch of the government such as might be entrusted with the management of this function. It was an agent or a dependent of the legislative branch.<sup>3</sup> As will be seen shortly, foreign relations were not certainly regarded as falling within the class of executive functions.

In introducing the plan, on behalf of the Virginia delegation, Edmund Randolph made a speech in which

<sup>1</sup> M. Farrand, *The Records of the Federal Convention of 1787* (New Haven, 1911), I, 20-22; III, 593.

<sup>2</sup> *Ibid.*, I, 21.

<sup>3</sup> M. Farrand, *The Framing of the Constitution of the United States* (New Haven, 1913), 79.

he enumerated the defects of the Confederation. The great defect was the lack of power in Congress. "Of this he cited many examples; most of which tended to shew, that they could not cause infractions of treaties or of the law of nations, to be punished."<sup>4</sup> The inference is clear—that Congress should have the power it had lacked hitherto. This criticism had nothing to do with the making of treaties, but only with their enforcement. Consequently, it may be said that neither the Virginia plan, nor Randolph in presenting it, made any reference to the management of foreign relations, and the presumption is that no change was expected. This conclusion squares well with what is known of the opinions of the members of the delegation. Much later in the Convention, a document of the committee of detail in Randolph's handwriting assigned the Senate power over treaties. James Madison entered the Convention with no well-defined theory of the executive, and it was not until the debate had gone some months that he came to see the utility of the executive having an "agency" in the matter of treaties.

Charles Pinckney's plan is more doubtful. When, in 1819, John Quincy Adams was preparing the "Journal" of the Convention for publication, Pinckney sent him a document purporting to be at least in the sense of the original, which said, "The Senate shall have the sole and exclusive power to declare War and to make treaties and to appoint Ambassadors and other Ministers to Foreign nations." The President "shall com-

<sup>4</sup> Farrand, Records, I, 19.

mission all the Officers of the United States and except as to Ambassadors other ministers and Judges of the Supreme Court he shall nominate and with the consent of the Senate appoint all other Officers of the United States—He shall receive public Ministers from foreign nations.”<sup>5</sup> The document was early disputed; Madison told Jared Sparks that he doubted if it was the original draft,<sup>6</sup> and Rufus King told John Quincy Adams much the same thing.<sup>7</sup> While, however, the document as a whole has been proved to be of a later date, the parts relating to the treaty-making power are not subject to many of the objections which are valid against other parts. For instance, many points were as Madison said, “the results of subsequent discussion,”<sup>8</sup> but that was not true of the provision regarding the Senate’s exclusive power over making treaties. Indeed, the contrary is true, for we know that the plan here proposed was early before the Convention and subsequently abandoned. It is much more likely, in the nature of the case, that the points which differed from the Constitution were in the original plan, than the points in which there is a marked similarity with the Constitution as finally adopted. We know, moreover, that Pinckney was working upon the basis of a remodelled Confederation,<sup>9</sup> and the whole tenor of his

<sup>5</sup> Farrand, Records, III, 599.

<sup>6</sup> Ibid., 479.

<sup>7</sup> Ibid., 481-482.

<sup>8</sup> Ibid., 615.

<sup>9</sup> Ibid., 602-603.

opinion was in the direction of congressional government.<sup>10</sup>

Scholars have reconstructed Pinckney's plan. The reconstructed plan provides that the Senate and House of Delegates in Congress assembled were to institute and appoint officers for the Department of Foreign Affairs.<sup>11</sup> The President was given power only to "inspect" the department, the head of which was to be a member of his council.<sup>12</sup> In his "Observations" Pinckney said the President should appoint all officers except judges and foreign ministers, and he spoke of the President as peculiarly "charged with all the business of the Home Department."<sup>13</sup> It is perfectly obvious, therefore, that whatever was the precise wording of Pinckney's plan, the first proposal put before the Convention, which had to do with treaties, was based upon the assumption that not only treaties, but all foreign affairs, even to the appointment of officers and agents, were to be under congressional, not presidential, control.

The third set of proposals put before the Convention constituted the small state ideas, the so-called Paterson plan. It was frankly a revision of the Articles of Confederation, and was intended to strengthen the powers of Congress. While the proposals did not specifically

<sup>10</sup> See Pinckney's "Observations," *ibid.*, 106 ff., especially 111.

<sup>11</sup> *Ibid.*, 608.

<sup>12</sup> *Ibid.*, 606.

<sup>13</sup> *Ibid.*, 111.

mention foreign affairs or treaties,<sup>14</sup> the fact that they did provide that Congress was to have all the powers it had under the Confederation makes it clear that the treaty-making power was to remain as it was before. Exactly the same comment applies to the proposals of Roger Sherman.<sup>15</sup>

Alexander Hamilton was not satisfied with any of the proposals which had been advanced. He was interested in the erection of a strong executive branch. Naturally the feeble executive of the Virginia plan was not satisfactory to him, and the Paterson plan was even more distasteful. He occupied a peculiar position in the Convention. There was no strong delegation behind him. Indeed, he regularly found himself the minority of the New York delegation. No powerful group was seeking precisely the end he had in view. Profoundly impressed with the need for sounding another note, he put his whole energy into his great speech of June 18, 1787. In connection with that he read his proposals. They were not put before the Convention in a formal way, but a number of delegates made memoranda of his propositions. The essential fact is that these proposals were a part of the debate. In presenting his ideas, therefore, he naturally laid emphasis upon those which ran counter to the notions which had been tacitly or actively accepted up to that point in the discussion.

<sup>14</sup> Farrand, Records, I, 242-243.

<sup>15</sup> Ibid., III, 615.

Pleading for a department of which the others seemed to him unduly jealous, he made the first departure from the assumption that foreign affairs should be entirely under legislative control. He urged that the executive ought "to have with the advice and approbation of the Senate the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of Finance, War and Foreign Affairs; to have the nomination of all other officers (Ambassadors to foreign Nations included) subject to the approbation or rejection of the Senate. . . . The Senate to have the sole power of declaring war, the power of advising and approving all Treaties." <sup>16</sup> This was a complete break with the assumption of legislative control. It was a proposal for executive independence in the management of all foreign affairs save war-making and treaties. It left no doubt where the initiative was to rest and who should shape policy. Absolute power to appoint the head of the Department of Foreign Affairs carries an unmistakable inference of unchecked control of the management of that department.

His proposition went further than the Constitution or statutes have ever gone, though practice has approximated it. As though to emphasize his dissent from Pinckney's proposal, he included ambassadors specifically among those officers whose nomination and final appointment should come from the President, the Senate being confined to approval or disapproval.

<sup>16</sup> *Ibid.*, I, 292; and see *ibid.*, III, 622, 624-625.



Similarly the context makes it appear that the initiative and management in the negotiation of treaties was to rest with the President, the Senate being limited to advice and approbation. It is difficult to estimate the impression which this speech and the proposals which accompanied it made upon the Convention. The fact that no formal proposition was introduced makes such an estimate the more difficult. So far as Hamilton's ideas with reference to executive control of foreign affairs were concerned, the lack of a specific proposal to the Convention was ultimately remedied.

Late in August, Gouverneur Morris, seconded by Charles Pinckney, whose ideas had obviously undergone some modifications, submitted a plan for a council of state, which went to the committee of detail.<sup>17</sup> It included, as the fourth section, "The Secretary of foreign affairs who shall also be appointed by the President during pleasure. It shall be his duty to correspond with all foreign Ministers, prepare plans of Treaties, and consider such as may be transmitted from abroad; and generally to attend to the interests of the United States in their connections with foreign powers."<sup>18</sup>

All the plans which were put before the Convention have been noticed. Only those of Hamilton and Morris mentioned the management of the general diplomatic business of the United States. Both proposed to transfer it to the executive. Unquestionably

<sup>17</sup> Farrand, Records, II, 336, 342, 343.

<sup>18</sup> Ibid., 343.

most of the delegates regarded these proposals as somewhat extreme. Hamilton's plan was never formally considered at all, and Morris's, after being in committee two days, was whittled out of all recognition. The broad question of the control of foreign relations, raised in these two instances, received no further discussion, or virtually none. Discussion turned wholly, in so far as it dealt with foreign relations at all, about the making of treaties.

After Hamilton's speech, the next mention of the treaty-making power came June 26. It has the more significance because it was incidental. On that day, in a debate as to the tenure of Senators, James Wilson said, "Every nation may be regarded in two relations. 1, to its own citizens. 2, to foreign nations. It is therefore not only liable to anarchy and tyranny within but has wars to avoid and treaties to obtain from abroad. The Senate will be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign nations."<sup>19</sup> It is, perhaps, significant of the attitude of the Convention toward Hamilton's ideas that no one took issue with this confident assertion of Wilson. It was passed over in silence and the matter received no further attention until after the committee of detail reported early in August.

In the work of that committee the matter first appears in a preliminary draft in the handwriting of Edmund Randolph with emendations by John Rut-

<sup>19</sup> Ibid., I, 426.

ledge.<sup>20</sup> Randolph wrote, "The powers destined for the senate peculiarly, are: 1. to make treaties of commerce; 2. to make peace." Rutledge amended it to read "to make Treaties of peace and Alliance." Randolph's third "peculiar power" is not germane; Rutledge added a fourth, "to send Embassadors."<sup>21</sup> Later, as an afterthought, Randolph inserted as one of the duties of the executive "*receiving embassadors.*"<sup>22</sup> A second and later draft was in Wilson's handwriting.<sup>23</sup> It provided that "the Senate shall be empowered to make Treaties of Peace, of Alliance, and of Commerce, to send Ambassadors." He later amended it by crossing out and inserting, to read simply, "The Senate of the United States shall have Power to make Treaties of [sic] to send Ambassadors."<sup>24</sup> This draft was incomplete and no reference was made to the reception of ambassadors. A third and still later draft in Wilson's handwriting had suggestions and emendations by Rutledge. It provided that "the Senate of the United States shall have Power to make Treaties; to send Ambassadors."<sup>25</sup> It provided also that the executive "shall receive Ambassadors."<sup>26</sup> The report, presented August 6, made only verbal changes:

<sup>20</sup> Farrand, Records, II, 137.

<sup>21</sup> Ibid., II, 144-145.

<sup>22</sup> Ibid., 146.

<sup>23</sup> Ibid., 152.

<sup>24</sup> Ibid., 155. The *of* should have been crossed out.

<sup>25</sup> Numbered 11, *ibid.*, 169. Rutledge made no change.

<sup>26</sup> Numbered 12, *ibid.*, 171.

"IX Sect. 1. The Senate of the United States shall have power to make treaties, and to appoint Ambassadors";<sup>27</sup> and referring to the President, "X Sect. 2. . . . He shall receive Ambassadors."<sup>28</sup> It should be noticed that this report was made before Morris's plan for a council of state was submitted.

From the outset, it appears from the foregoing, it was the almost unanimous assumption that there would be legislative or at least senatorial control of the treaty-making power, of the appointment of representatives abroad, and of the management of the business of foreign intercourse. That assumption was so nearly unanimous that it did not provoke much discussion, Hamilton being up to that moment the only dissident. Looking at the matter in the light of more than a century and a quarter of practice under the Constitution, that point of view seems strange. It is worth some analysis.

In the first place, one may ask whether treaty-making was conceived to be a legislative or an executive function. Reviewing the discussions of the Convention, one comes to the conclusion that, in the view of its members, the determination of policy was a legislative function. Enforcement of policy was the function of the executive. Thus law-making was a legislative function, and law-enforcement executive. Treaties, in the view of the delegates, must be assimilated to laws. It had been one of the serious defects of the

<sup>27</sup> *Ibid.*, 183.

<sup>28</sup> *Ibid.*, 185.

Confederation that the treaties of the United States did not have the status of supreme laws of the land. They differed from laws, as was pointed out in the debate, in that they required the consent of a second power as well as of the United States. But the American policy embodied in a contract or treaty had to be shaped by some branch, and the policy-shaping branch was conceived as the legislature. It is, perhaps, on the basis of some such reasoning that the general assumption of the Convention during most of its session was that the initiative in treaty-making, as in law-making, should continue to rest where it had hitherto—in Congress.

The Virginia plan called for an executive who, "besides a general authority to execute the National laws, . . . ought to enjoy the Executive rights vested in Congress by the Confederation."<sup>29</sup> This is not a very illuminating definition since it uses a word to define itself. But when it is remembered that these Virginia delegates shared the common assumption that treaties would be made by Congress or the Senate, it is evidence that the making of treaties was not regarded as an executive function. Three days after the Virginia plan was introduced, Madison moved to amend the resolution and define the function of the executive as having "power to carry into execution the national laws,—to appoint to offices in cases not otherwise provided for; and to execute such powers, not legislative or judiciary in the nature, as may from time to time be

<sup>29</sup> Farrand, *Records*, I, 21.

delegated by the national legislature.”<sup>30</sup> This revealed the fact that the executive was expected to have some powers of appointment,—a conception that was accepted by the Convention at once. It also revealed the fact that Madison and Wilson, who seconded his motion, regarded the legislature as the final source of policy,—a conception which appears in the Constitution itself in the provision that Congress shall have the power “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”<sup>31</sup>

Wilson, who was a nationalist, and who desired a single executive with considerable authority, “did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war and peace etc. The only powers he conceived strictly Executive were those of executing the laws, and appointing officers, not <appertaining to and> appointed by the Legislature.”<sup>32</sup> Here, plainly enough, Wilson excludes the power of treaty-making because it does not fall within the executive department. Making a treaty of peace, like making a declaration of war,—the determination of the policy of peace as the decision upon a policy of war,—was

<sup>30</sup> Ibid., 63.

<sup>31</sup> Art. I, Sec. 8, *ibid.*, II, 656.

<sup>32</sup> Ibid., I, 65-66; see also *ibid.*, 70.



legislative and not executive. Madison agreed with Wilson "in his definition of executive powers—executive powers *ex vi termini*, do not include the Rights of war and peace etc." <sup>33</sup> The same point of view was expressed by Sherman, of Connecticut, who "considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect, that the person or persons ought to be appointed by and accountable to the Legislature only, which was the depositary of the supreme will of the Society. As they were the best judges of the business which ought to be done by the Executive Department, and consequently of the number necessary from time to time for doing it, he wished the number might <not> be fixed, but that the legislature should be at liberty to appoint one or more as experience might dictate." <sup>34</sup>

It is easy to forget how much there is of this idea in the Constitution. The executive departments, which are component elements of the executive, are created by, their number is determined by, and their powers are more or less minutely dictated by the legislature, which has, upon occasion, shown its power to deter-

<sup>33</sup> Farrand, Records, I, 70.

<sup>34</sup> Ibid., 65. Sherman kept his conception of the executive as the agent of the legislative branch. Writing to John Adams in 1789, he said, "The Executive is to carry out the will of the Legislature declared by the laws. The Senate will accomplish that end by advising appointments that will be most likely to effect it." L. Salmon, "History of the Appointing Power of the President," American Historical Association Papers, I, No. 5, 13. For Washington's idea, see below, 98 ff.



mine their tenure of office. Furthermore, one part of the legislature, the Senate, may at any time refuse to approve a nominee of the President. It is true that the Constitution gives the President power to require the opinions of the heads of departments in writing, but so far as power of control is concerned, that is a trifling grant compared with the power of Congress to set up, to demand reports from, or to destroy the several departments. Congress, indeed, undertook to exercise this power in the case of the Secretary of the Treasury. In the statute creating his office it was provided that he should "make report and give information to either branch of the Legislature, in person or in writing, as he may be required." For reasons political and practical, but not for lack of constitutional authority, this clause was never brought into use.<sup>85</sup>

There is no reason, so far as the Constitution is concerned, why Congress should not have written into the statute creating the Department of State the words of the ordinance of February 22, 1782, requiring the secretary to "report on all cases expressly referred to him for that purpose by Congress," or to attend the sessions of the Senate or House to "give information to Congress respecting his department, explain and answer objections to his reports when under consideration . . . and answer to such enquiries respecting his

<sup>85</sup> H. B. Learned, *The President's Cabinet* (New Haven, 1912), 100 ff.; for discussion of this whole matter, see M. L. Hinsdale, "The Cabinet and Congress, an Historical Inquiry," *Proceedings of the American Political Science Association*, 1905, II, 126-148.

department as may be put from the chair by order of Congress, and to questions stated in writing about matters of fact which lie within his knowledge, when put by the President at the request of a member and not disapproved by Congress.”<sup>36</sup> It is a common practice for the secretaries to appear before committees of Congress and it has frequently been proposed that they should be given the right to appear on the floor of the House or Senate to make explanations and answer questions. It is, of course, well known that Washington appeared in person before the Senate on a matter of treaties with Indians and that Jay went in person to give information on diplomatic business. Practice has gone so far astray from the bare grants of power, the Congress and Senate have refrained so markedly, save upon certain occasions, as in the days of Andrew Johnson, from exploiting their power, that a gloss has been put upon the words of the framers which tends to conceal their original intent.

During the discussions of the Convention the executive slowly emerged as a more important, more independent, and more powerful branch of the government. Instead of minutely defining the specific powers of the President, certain of them were mentioned,—such as the veto, the power to serve as commander in chief of the armed forces,—but the great body of power came to the President in a general vesting clause which opened the way to the growth and development of

<sup>36</sup> Jol. Cont. Cong., XXII, 89-90.

executive power.<sup>37</sup> But there is no evidence that the Convention considered the conduct of negotiations executive business. The committee of detail adopted the comprehensive vesting clause, first suggested by Pinckney, and provided that "the Executive Power of the United States shall be vested in a single person,"—the President. Yet it also provided that the Senate should control foreign affairs,<sup>38</sup> and no one suggested any incongruity. In the course of discussion, the House of Representatives was ruled out as too large, as not being in session with sufficient continuity, as being made up of a membership with too short a term to grasp properly great national problems. The Senate was distrusted as being made up of states' representatives, and so, perhaps, not sufficiently national in its outlook. It was through this process of elimination that the President came to have a part in making treaties; it was not because treaty negotiation logically fell within the field of executive activity.

In this connection it is significant that neither Hamilton's plan nor Morris's plan, which gave the President control over the conduct of negotiations, made any headway at all in the Convention. Both proposals sought to give the President full power to appoint the department head and to manage the department business. Morris said specifically that the preparation of

<sup>37</sup> For an interesting and scholarly discussion of this subject, see C. C. Thach, Jr., "The Creation of the Presidency, 1775-1789, a Study in Constitutional History," Johns Hopkins University Studies in Historical and Political Sciences, Series XL, No. 4, 182.

<sup>38</sup> Farrand, Records, I, 23; II, 183, 185; III, 599.

plans for treaties should be in this presidentially controlled department.<sup>39</sup> What was the fate of these proposals—the only ones before the Convention which would give the President a clear mandate? Hamilton's was overlooked entirely—neglected and not replied to; that of Morris was almost obliterated. Instead of being an officer provided for by the Constitution, with rights and powers defined, the head of the foreign office became the creature of legislative action which could give him as much or as little power and those sorts of power which Congress chose. His only relationship with the President, as defined by the Constitution, was that the President might require his opinion in writing. This did not necessarily mean control. In the plan which Pinckney had put before the Convention at the beginning of its work, the head of the Department of Foreign Affairs was to be a member of the President's council, but he was, nevertheless, the creature of Congress.<sup>40</sup> The report of the committee of detail gave the President the right to take the advice of the head of a department, but so might Congress, if it chose to put it so in the statute. The officer, instead of being the appointee of the President, could only be nominated by the President and could not be appointed unless the Senate consented. His tenure of

<sup>39</sup> As early as July 19, in a speech on the executive, Morris had held that the executive should have the authority to appoint "ministerial officers for the administration of public affairs," who "he presumes will exercise their functions in subordination to the Executive." Farrand, Records, II, 52-54.

<sup>40</sup> Above, p. 31.

office, once he was appointed, was left to be settled by custom or by statute. In short, the report of the committee of detail on Morris's scheme had cut the heart from it; and the Constitution, as finally adopted, has only traces of it. If the committee of detail or the Convention had agreed with the principles involved in Morris's scheme, it could have found words more apt to say so than those which the Constitution contains about the right of the President to require written opinions. The only fair inference to be drawn from the changes which were made and from the mere shred which finally found its way into the Constitution is that the principle upon which the Morris plan was built did not suit the mind of the Convention. In fact, the only man bluntly to declare "that the Senate ought not to have the power of treaties," that "this power belonged to the Executive department," was John Francis Mercer, of Maryland, who made the declaration on August 15. He proceeded to qualify it somewhat by "adding that Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain."<sup>41</sup>

Indeed, it is hardly going too far to say that so far as the Constitution is concerned we might have had, either by the operation of law or custom, a system akin to parliamentary government. At the moment when the report on Morris's plan was presented, August 22,<sup>42</sup> the supposition was that the Senate would control

<sup>41</sup> Farrand, Records, II, 297.

<sup>42</sup> Ibid., 367.

foreign affairs. That is evidence that the committee in cutting Morris's plan to shreds did not approve of his proposed transfer of that power to the President, and nothing occurred after that time to indicate that the Convention had changed its mind on that broad question. Consequently, if we seek in the Constitution, as distinguished from statute or custom, for the power of the President to manage foreign relations, it can be done only by "such juristic gymnastics as that which derives the President's control . . . from his powers to make treaties and to name and receive ambassadors—in the first two of which the Senate participates, and the latter undoubtedly intended as a purely formal power."<sup>43</sup>

It was not until after this matter of principle had been settled that a new suggestion was made that the President should participate in treaty-making. Hamilton, Mercer, and Morris (to a limited extent) had held that it was properly an executive function. The new proposal was of a different character. It was based upon practical considerations, upon the size and composition of the legislature. The experience of the Confederation made all willing to give the treaty-making and treaty-enforcing power to the central government, but it was assumed that it would be in the custody of the Senate, the guardian of state interests. The power

<sup>43</sup> Thach, *Creation of the Presidency*, 124. The interpretation in the text runs counter to that of Dr. Thach, who holds that the Convention anticipated presidential control of the executive departments, and who believes that the preparation of plans for treaties was regarded as an executive function.



to make treaties, as George Mason said, gave power to "sell the whole Country,"<sup>44</sup> and it might affect the fisheries and the Mississippi, which Gouverneur Morris believed to be "the two great objects of the Union."<sup>45</sup> Doubts as to the wisdom of this assignment of treaty-making to the Senate were voiced by Madison, who argued briefly "that the Senate represented the States alone, and that for this as well as other obvious reasons it was proper that the President should be an agent in Treaties."<sup>46</sup>

His proposal met with no active support or response, but later in the debate Madison returned to the idea with a query "whether a distinction might not be made between different sorts of Treaties—Allowing the President and Senate to make treaties eventual and of Alliance for limited terms—and requiring the concurrence of the whole Legislature in other Treaties."<sup>47</sup> These suggestions were very mild and fell far short of giving the President such control of foreign affairs as

<sup>44</sup> Colonel Mason said "the Senate . . . could already sell the whole Country by means of Treaties." Farrand, Records, II, 297.

<sup>45</sup> Ibid., 548. "In place of allowing congress to appoint ambassadors, to make treaties and to settle disputes between the states, as had been the case under the confederation, those functions were now [by the committee of detail] transferred to the senate, the body which more nearly corresponded to the old congress as the representative of the states, and the disputes between states to be settled in this way were limited to those regarding territory or jurisdiction." Farrand, Framing of the Constitution, 131.

<sup>46</sup> Farrand, Records, II, 392.

<sup>47</sup> Ibid., 394.



he now enjoys. He said nothing of giving the executive a share in the appointment of foreign representatives. The use of the word "agency" is vague and does not indicate a very important rôle.<sup>48</sup> It is not unlikely, indeed, that the use of the word implied that the Senate was to be the principal, and the President only the agent of the Senate. Years afterward, in 1793, Madison argued that treaty-making was a legislative function because treaties were to have the operation of laws and that the extraordinary majority was required in lieu of the concurrence of the House. In 1787, he was ready to admit that they partook of executive character and so justified the connection of the executive and the quasi executive Senate with them.

Most of the discussion of the treaty-making power on August 23, however, ignored Madison's suggestions and concerned itself with the problem whether the House of Representatives should play a part. The debate upon that point was precipitated by a motion introduced by Gouverneur Morris. He said he "did not know that he should agree to refer the making of Treaties to the Senate at all, but for the present would move to add an amendment to the section, after 'Treaties'—'but no Treaty shall be binding on the United States which is not ratified by a law.'"<sup>49</sup> Madison

<sup>48</sup> See, for example, his use of the word in describing the function of the House of Representatives in regard to treaties. Far-  
rand, *Records*, III, 372.

<sup>49</sup> *Ibid.*, II, 392.

objected that the suggested procedure would be "inconvenient" in the case of treaties of alliance for the purpose of war.<sup>50</sup> Nathaniel Gorham had a more decided objection. He argued that "a minister could not then be instructed by the Senate who were to appoint him, or if instructed there could be no certainty that the house of representatives would agree to confirm what he might agree to under these instructions."<sup>51</sup> Thus American agents would find themselves in an impossible position in dealing with other negotiators who knew their authority more precisely. Dr. William S. Johnson agreed with Gorham; he "thought there was something of solecism in saying that the acts of a Minister with plenipotentiary powers from one Body, should depend for ratification on another Body."<sup>52</sup>

It is patent from this that they had no conception of such a system as that under which the United States now operates, where ministers do go abroad not instructed by the same authority which is to ratify their proceedings—not even instructed by an officer responsible to that body. Under the Confederation it was a matter of course that if a treaty were framed in accordance with instructions prepared at the behest of Congress and approved by it, the treaty was bound to be

<sup>50</sup> Ibid.

<sup>51</sup> Ibid., 395.

<sup>52</sup> Ibid., 393.

ratified.<sup>53</sup> However, the objection raised by Gorham and Johnson was sufficient to bar the House of Representatives from participation in the ratification of treaties.<sup>54</sup> This fact throws a good deal of reflected light upon the intention of the framers when they joined the President and Senate together in the "making" of treaties. It is fairly inferable that they did not plan to run into the solecism mentioned by Dr. Johnson; and if they did not, the only thing they could have meant by the provision as it appears in the Constitution was that the President and Senate should act together in jointly preparing instructions and conducting negotiations.<sup>55</sup> It may be that the "agency" planned for the President was similar to that of the Secretary of Foreign Affairs under the Confederation, whose drafts of instructions were approved by Congress, and who was directed to keep Congress informed of every important step in the progress of the negotiations.

It is reasonably clear that even Morris expected that Congress would be kept in touch with the progress of negotiations. The objections of Gorham and Johnson would have weight, he thought, if negotiations were to be conducted abroad. One of the objects he sought

<sup>53</sup> R. Hayden, *The Senate and Treaties, 1789-1817, the Development of the Treaty-Making Functions of the United States Senate during their Formative Period* (New York, 1920), 9, and citations.

<sup>54</sup> Morris's motion was lost by a vote of eight to one, one state being divided. Pennsylvania alone voted aye. Farrand, *Records*, II, 393.

<sup>55</sup> See Thach, *Creation of the Presidency*, 129.

was to compel the making of most treaties on this side of the water. With this astonishingly provincial concept both James Wilson and John Dickinson expressed agreement. Here, then, were Morris, who had attempted to set up an executive structure as part of the Constitution, and Wilson, who had selected the general vesting clause that opened the way to executive growth, joined in a motion which would give Congress complete control of treaty-making.

Morris offered one more objection: namely, to the appointment of officers by the Senate "as too numerous for the purpose; as subject to cabal; and as devoid of responsibility."<sup>56</sup> Wilson agreed with this view, but no motion was offered. The only change made in Article IX as the result of the day's debate was to add "other public ministers" after the word "ambassadors." But though the Convention had not been able to agree upon important changes, there was a feeling of dissatisfaction with the provisions, and Article IX, Section 1, was referred to the committee of five,<sup>57</sup> and later to the committee of eleven on unfinished parts of the Constitution, which was composed of Gilman, King, Sherman, Brearley, G. Morris, Dickinson, Carroll, Madison, Williamson, Butler, and Baldwin.<sup>58</sup>

On August 25, Article X, Section 2, was amended to read, the President "shall receive ambassadors and other public Ministers."<sup>59</sup> When Article X, Section 4,

<sup>56</sup> Farrand, Records, II, 389.

<sup>57</sup> Ibid., 392-394.

<sup>58</sup> Ibid., 473.

<sup>59</sup> Ibid., 419.

reappeared from its commitment, September 4, the influence of Madison and of Gouverneur Morris was plainly visible. The report read, "The President by and with the advice and consent of the Senate, shall have power to make treaties: and he shall nominate and by and with the advice and consent of the Senate shall appoint Ambassadors and other public Ministers. . . . But no Treaty shall be made without the consent of two-thirds of the Members present."<sup>60</sup> This incorporated Madison's idea about the "agency" of the President, though it gave him more power than Madison had intended. It also met Morris's objection to appointments by the Senate.

Many amendments were offered. Wilson pressed the idea of having the House of Representatives play a part, despite its previous defeat. He argued that since treaties "are to have the operation of laws, they ought to have the sanction of laws also." That sanction he conceived to be more important than secrecy.<sup>61</sup> This furnished further evidence that he still clung to his opinion expressed early in the Convention that matters of policy,—as of war and peace, for example,—were not executive in character, and that treaty-making was legislative in character. Sherman, in disagreeing with the proposal to give the House of Representatives a share, put it upon the practical ground that "the necessity of secrecy in the case of treaties forbade a reference of them to the whole Leg-

<sup>60</sup> Farrand, Records, II, 495, 498-499.

<sup>61</sup> Ibid., 538.

islature." It was for that reason that he would confine the business to the President and Senate. Wilson put his suggestion in the form of a motion, but it was defeated, ten states to one, only Pennsylvania, as before, voting in favor.

Wilson and Pinckney, the first responsible for the comprehensive executive vesting clause, and the other the original author of the clause and the seconder of Morris's motion for executive departments, also objected to the appointment of ambassadors by the President, desiring to leave it wholly in the control of the Senate. Here was a further demonstration that these "strong executive" men did not contemplate or desire that the President should have the power he came to wield. But the provision had found so much support that this reactionary move was defeated, and the sentence regarding appointments was agreed to after the words "and consuls" had been added.<sup>62</sup> Wilson and King further objected to the requirement that two-thirds of the Senators present must agree, on the ground that it gave a minority control over the foreign relations of the country, but they did not press their objection with a motion.<sup>63</sup>

Despite the obvious effect of his influence on the report, Madison was not wholly satisfied. It gave the President a more important "agency" than he had intended. He moved, therefore, to insert "except treaties of peace" after the word "treaty" in the last

<sup>62</sup> Ibid., 538.

<sup>63</sup> Ibid., 540.

clause; his motion was agreed to.<sup>64</sup> Then he proposed to provide for treaties of peace through a motion to authorize two-thirds of the Senate to make a treaty of peace without the concurrence of the President. This motion is very instructive because it makes it evident that even Madison, who wished the President to share the treaty-making power, did not wish him to control the whole machinery of foreign relations. If he had the initiative, if he were the sole channel of official communication with foreign nations, if the head of the Department of Foreign Affairs were responsible solely to him, the Senate would have no means of negotiating peace without his concurrence.

This motion throws some light upon Madison's notion of the "agency" of the President. He did not wish the President to have the complete initiative and the absolute veto he now enjoys. Wars, Madison foresaw, would enhance the President's power; he feared that Presidents might hesitate to make peace because it would involve loss of power. Pierce Butler seconded the motion,<sup>65</sup> but Gouverneur Morris and Gorham opposed it as unnecessary, the one because he "thought the power of the President in this case harmless," and the other because he "thought the precaution unnecessary as the means of carrying on the war would not be in the hands of the President, but of the Legislature."<sup>66</sup> Elbridge Gerry insisted that a treaty of

<sup>64</sup> Farrand, Records, II, 540.

<sup>65</sup> *Ibid.*, 540.

<sup>66</sup> *Ibid.*, 540-541.



peace should require the assent of a larger proportion of the government than other treaties because the dearest interests of the country were at stake. Madison's motion was lost, eight to three, only South Carolina, Georgia, and Maryland voting in the affirmative. Its failure, however, was not due to any belief that it took away from the President any function executive in character. The objections were all on practical grounds. No one repeated Mercer's earlier assertion that treaty-making was executive business.

Richard D. Spaight moved to insert "that the President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting Commissions which shall expire at the end of the next Session of the Senate."<sup>67</sup> After this happy suggestion was agreed to, the whole section was adopted, leaving unsettled the question how treaties of peace should be made.<sup>68</sup> The matter was in a most unsatisfactory condition. The Convention had agreed that treaties of peace should require an extraordinary procedure, but could not agree upon any process as satisfactory. September 8, when King moved to strike out the exception of treaties of peace, the Convention decided to reconsider the whole question. Debate on that day neglected the President and centered on two points; first, whether treaties of peace should be excepted from normal practice; second, what majority should be required in the Senate to "make" a treaty.

<sup>67</sup> Ibid., 540.

<sup>68</sup> Ibid., 541.

Gouverneur Morris defended the notion of devising an exceptional practice in the case of treaties of peace. He seemed to want a simple majority of the Senate to suffice for making that sort of treaty. He did not state specifically whether the President should have any part.<sup>69</sup> This view was supported by Wilson, who insisted that otherwise a minority could compel a majority to continue a war. Hugh Williamson felt, on the other hand, that a majority was not enough because, as he said, it would allow treaties "to be made in the branch of the Government where there may be a majority of the States without a majority of the people."<sup>70</sup> Gerry went further, declaring a majority of the Senate might not represent one-fifth of the people. Sherman, who had expressed some doubt the day before whether the power to make treaties "could be safely trusted to the Senate,"<sup>71</sup> had decided that the necessity for secrecy made it imperative that the power be left there rather than in both houses. But now when treaties of peace were under discussion his qualms returned. He was against "leaving the rights, established by the Treaty of Peace, to the Senate, and moved to annex a 'proviso that no such rights should be ceded without the sanction of the Legislature.'"<sup>72</sup> Gouverneur Morris, who had but shortly before made a suggestion of his own, now endorsed Sherman's.

<sup>69</sup> Farrand, Records, II, 548.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid., 538.

<sup>72</sup> Ibid., 548.

Amid the multitude of plans and opinions it seemed that no agreement on a satisfactory manner of providing for treaties of peace could be reached. So the clause "except treaties of peace" was eliminated by vote of eight states to three, New Jersey, Delaware, and Maryland voting to retain it.

Having decided to use the regular procedure in making treaties of peace, the discussion turned to deal with that process. James Wilson and Jonathan Dayton moved to eliminate the two-thirds requirement, but only Delaware voted aye. That ended efforts to get a less number. An attempt to make ratification more difficult was made by Rutledge and Gerry through a motion to require the consent of two-thirds of the total membership for treaty-making. The motion was lost, eight states to three. Fearing that a rump might some day put through a treaty, Sherman and Gerry moved to require the consent of a majority of the total membership of the Senate. Their motion was lost by a narrow margin of five to six, Massachusetts, Connecticut, Delaware, South Carolina, and Georgia voting aye. With the same danger in mind, Williamson and Gerry moved "that no Treaty should be made without previous notice to the members, and a reasonable time for their attending."<sup>73</sup> That motion being lost, eight to three, the whole clause was agreed to,—with Pennsylvania, New Jersey, and Georgia voting in the negative,—precisely as it had come from the committee of eleven, save for the addition of Spaight's amendment,

<sup>73</sup> *Ibid.*, 549-550.

and the insertion of the words "and consuls," neither of which changes affected its sense or intent. The provision that the President "shall receive Ambassadors, other public Ministers and Consuls" was also retained.<sup>74</sup>

The section dealing with treaties was referred, along with the others, to the committee on style, composed of Johnson, Hamilton, Gouverneur Morris, and King.<sup>75</sup> They reported it in the form in which it stands in the Constitution. "He [the President] shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls. . . . The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session."<sup>76</sup> The changes were only verbal. On September 15, the provision for vesting the appointment of such inferior officers as Congress may designate in the President, the courts, or heads of departments was incorporated on motion of Gouverneur Morris.<sup>77</sup> No further change was made.

Reviewing the work of the Convention upon this matter it is apparent that the members had little con-

<sup>74</sup> Farrand, Records, II, 575.

<sup>75</sup> Ibid., 547.

<sup>76</sup> Ibid., 599-600.

<sup>77</sup> Ibid., 627-628.

ception of the business of foreign relations. They were transparently actuated by the sentiments which led Washington to urge, in his farewell address, that we should have as little political connection with the old world as possible. Wilson, for example, said in the Pennsylvania ratifying convention, "With regard to their power in making treaties, it is of importance that it should be very seldom exercised. We are happily removed from the vortex of European politics, and the fewer and the more simple our negotiations with European powers, the better they will be. If such be the case, it will be but once in a number of years that a single treaty will come before the Senate."<sup>78</sup> This point of view seems extraordinary now, but it was not unnatural in 1787. The thought of members of the Convention on this, as on other matters, was conditioned by their experience. And experience in foreign affairs was slight.

The Department of Foreign Affairs was not great and vigorous; it was small, housed in two rooms, with a personnel of from three to five.<sup>79</sup> For eighteen months before Jay took charge there had been no secretary, the papers had been sealed, and the clerks had left the office,—so that the archives were not available even to Congress. The diplomatic service after the close of the Revolution had consisted of a minister to

<sup>78</sup> J. Elliot, *Debates in the Several State Conventions on the Adoption of the Federal Constitution* (2d. ed., Washington, 1836), II, 513.

<sup>79</sup> See Jameson, *Essays in Constitutional History*, 160-165; Hunt, *Department of State*, 49-50.

England part of the time, a minister to France, a minister to Spain, and one to Holland part of the time; whereas the diplomatic corps at the seat of the government consisted of a minister from France, occasionally one from Spain, and a minister and consul general from the Netherlands. The consular service was composed of a few consuls, not authorized by any legislation, and not organized systematically at all.<sup>80</sup> In the eleven years of the existence of the United States as a professedly independent power, treaties had been made with six nations—France, the Netherlands, Great Britain, Sweden, Prussia, and Morocco. The whole diplomatic correspondence was comprised in a few volumes—so that Washington, on taking office, could read it all through. In the previous chapter it has been made sufficiently clear that even under the strong leadership of John Jay the Department of Foreign Affairs was not a mature organization.

The overemphasis upon treaties was also natural, considering the time. In the nature of the case, the problem of a new nation is to negotiate treaties, either to gain recognition thereby, or to regularize its contact, commercial and political, with older nations. The routine relations of an established nation are of a different sort. The making of treaties occupies much less time and attention, proportionately, and the interpretation of treaties, their application to particular cases, and dealing with matters outside treaty relations bulk larger. The men of 1787, therefore, had a clear

<sup>80</sup> Hunt, Department of State, 230.



perception of the importance of treaties. They had had years of negotiation in an effort to get a treaty from Spain, and the situation in the West with reference to the opening of the Mississippi was acute. They knew of the need for a treaty with Great Britain to put our commercial intercourse upon a better footing and to settle outstanding difficulties. The wide range of diplomatic relationships which lies outside treaty negotiations was not so much in their thought. In consequence, no mention whatever was made of any form of foreign relations save the making of treaties and the sending and reception of ambassadors and ministers of other diplomatic grades.

The second general feature of the work of the Convention that stands out in a review of its debates is that the opportunity for the President to occupy his present dominant position in the conduct of foreign affairs was opened largely through accident. The President's part in treaty-making was not discussed at length. It was mentioned very few times, and only very briefly. Then the President was given an "agency" in the matter. None of the speakers regarded it as of large importance. It was simply a matter of convenience. Even by those most jealous of executive power it was never suggested that it was a dangerous addition to powers already great. As stated in the Constitution, the President's power over foreign relations is surely not an adequate description, even in general terms, of the duties and powers of a man in control of foreign relations. Indeed, it is not stated



in general terms at all. Only certain specific things are mentioned.

One phrase in the Constitution, which the framers employed without engaging in any discussion with regard to it, invites analysis and comment. The President is to act in two cases "by and with the advice and consent of the Senate." In one of these—the matter of appointments—the text indicates a specific function for the President; he is to nominate. Thus the initiative is located in the President. In the other case where the phrase occurs—the making of treaties—there is no partition of function described or implied in the context. Nothing in the words shows where the initiative was supposed to rest.

The phrase was a familiar one to the makers of the Constitution. It was regularly used in the enacting clause of British statutes. The usual form of laws passed by Parliament was a "whereas" clause which stated the necessity for legislation; then followed the words, "we, your Majesty's most dutiful and loyal subjects, the commons of Great Britain, in parliament assembled, do most humbly beseech your Majesty that it may be enacted; and be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same. . . ." <sup>81</sup> This origin of the phrase is interesting and suggestive. For in the statute the words "advice and consent" cover a process which

<sup>81</sup> Pickering's Statutes, XXXVI, 197, 260, etc.

those words in their ordinary meaning do not contemplate. The advice and consent of Parliament included complete initiative in introducing a measure as well as full power in drafting and elaborating its language. The king, who enacted the measure, had for more than two generations before 1787 had no option save to approve the bill as presented. He could neither alter the text nor refuse assent. In this way the body which had for its function advising and consenting monopolized the initiative and possessed the whole substance of power.

The framers of the Constitution were also familiar with the phrase through its use in the provincial laws of some of the colonies. Some seventeenth century laws of Virginia were drafted in England and the governor given a full power under the great seal to affix the royal assent. The preamble of such laws read: "The King's Most Excellent Majesty, having taken into his serious and gracious consideration, the present state and condition of his Colony of Virginia . . . is graciously pleased that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the General Assembly, That. . . ." <sup>82</sup> In these cases advice and consent consisted in accepting and passing the prepared statute. Acts which originated in the assembly had a different enacting clause: "Be it Enacted and Declared, by the Governor, Council, and Burgesses, . . . by the authority

<sup>82</sup> The Acts of Assembly now in Force in the Colony of Virginia . . . (Williamsburg, 1752); 28-29.

of the same, That. . . ." <sup>83</sup> In North Carolina the regular "style" of the enacting clause was a "whereas" clause, and then, "We pray that it may be Enacted, And be it Enacted by His Excellency . . . Governor, by and with the advice and consent of his Majesty's Council, and General Assembly of this Province, That . . ." <sup>84</sup> In this instance the phrase had almost precisely the same connotation which it possessed when used in British statutes. In Pennsylvania, also, the enacting clause was in similar form. <sup>85</sup> Most of the other col-

<sup>83</sup> Ibid., passim. It is interesting to note that in the session of 1680 all the acts have the enacting clause mentioning the king. At the end of the acts of that session is a "Memorandum, That the Stile of all the Acts of this Session, except the first Three, was mistaken, and ought to have been in the name of the Governor, Council, and Burgesses, and not in the Name of the King, as those were which were proposed and sent over under the Great Seal of *England*, by the King himself." Ibid., 35.

<sup>84</sup> A Collection of All the Public Acts of Assembly of the Province of North Carolina, now in Force and Use (Newbern, 1751), 80. Before 1754 it read, "Be it enacted by his Excellency the Palatine, and the rest of the true and absolute Lords Proprietors of Carolina, by and with the advice and consent of this present General Assembly, . . . and it is hereby enacted, That . . ." Ibid., 2.

<sup>85</sup> "We the representatives of the Freemen of the Province of Pennsylvania, . . . do pray that it may be enacted, and be it enacted by the Honourable James Hamilton, Esq., Lieutenant Governor . . . by and with the advice and consent of the Representatives of the Freemen of the said Province in General Assembly met, and by the authority of the same, That . . ." Laws of Pennsylvania, Anno Regni Georgii II Regis, . . . Trecesimo Tertio. At a General Assembly of the Province of Pennsylvania, Begun and Holden at Philadelphia, the Fifteenth Day of October, Anno Domini 1759 . . . (Philadelphia, 1760), passim.

onies used a form which did not mention advice and consent, the enactment being in the name of the governor, council, and assembly jointly.<sup>86</sup> In any event, however, the framers were accustomed to the use of the phrase in colonial laws in a sense much broader than the usual meaning of the words.

The men who wrote the Constitution were familiar with a third, and very common, usage of the phrase,—in the commissions and instructions of the colonial governors. The governor stood in place of the king. His powers were those of the king, modified to suit his different circumstances. Like the king he acted with the advice and consent of a council. The number of things which the governor could do alone, and of his own motion, was small; the number which required the concurrence of his council was large.<sup>87</sup> One fact with reference to its cooperation is clear. The governor took its advice and consent in council, sitting as its presiding officer.<sup>88</sup> It was no long-range matter. When the council acted in its capacity of upper house of the colonial legislature, the governor was not present, and

<sup>86</sup> See, for example, Acts of the General Assembly of the Province of New Jersey, [compiled by] Samuel Nevill, Esq. (1752), *passim*; Acts and Laws of His Majesty's Province of New Hampshire in New England . . . (Portsmouth, 1761), *passim*.

<sup>87</sup> E. B. Greene, *The Provincial Governor, in the English Colonies of North America* (New York, 1898), 81.

<sup>88</sup> For examples, in New York, *Documentary History of New York*, ed. E. B. O'Callaghan (New York, 1850), II, 28-29, 202, 207, 211, 212; IV, 444-456; in New Hampshire, *ibid.*, IV, 460.

the council had its own presiding officer.<sup>89</sup> But when the council gave its advice and consent to the acts of the executive, it acted under his presidency. Usually he proposed matters for consideration, but the council had a free hand in discussing them and could vote to approve or disapprove.<sup>90</sup>

Beyond the matter of procedure, the relationship of the governor and his council in the conduct of executive business was more variable. In some early cases the governor had no power beyond that of the members of his council. Power was given to the governor and council jointly. When they voted, the governor's vote was but one among many, and he was bound by the decision of the majority.<sup>91</sup> Usually, however, the initiative was presumed, in legal contemplation, to be in his hands, just as the king, in the view of the law, had the initiative in England. But in point of practice, the degree of initiative which a governor actually did possess was variable. The history of the colonial executive is partly to be found in the familiar rivalry with legislative assemblies, but it is also partly a less well understood rivalry between the governor and his council. Many controversies between governors and their councils arose over the appointing power. In some cases the governor had complete initiative in

<sup>89</sup> Greene, *The Provincial Governor*, 43-44. Often the presiding officer of the council in legislative session was the lieutenant governor. *Ibid.*

<sup>90</sup> *Ibid.*, 79.

<sup>91</sup> H. L. Osgood, *The American Colonies in the Seventeenth Century* (New York, 1904-1907), III, 87.

making the nominations, and the council merely approved; in others, at the opposite extreme of practice, the council attempted to make nominations.<sup>92</sup> This may have been one reason why the framers of the Constitution were so explicit in giving the nominating power to the President; in that way they sought to avoid conflict over the power to make the initial move in appointments.

Appointments did not furnish the only occasion when the council sought to erect its power to advise and consent into a power to dominate executive action.<sup>93</sup> Variations in practice arose because of personal qualities of governors and councillors and from the method of selecting and appointing the council itself. Some governors gave faithful and complaisant councillors posts which brought fees and honors, and created, in that way, political machines.<sup>94</sup> There was a tendency, moreover, for the official class to form a sort of aristocracy with common interests.<sup>95</sup> Some governors sought to strip the council of powers; others, less ambitious or more indolent, were glad to shift responsibility from their own shoulders.<sup>96</sup> In most colonies the councillors were appointed by the

<sup>92</sup> Greene, *The Provincial Governor*, 29, 81-82, 112.

<sup>93</sup> Osgood, *The American Colonies in the Seventeenth Century*, II, 263-269.

<sup>94</sup> *Ibid.*, III, 351.

<sup>95</sup> *Ibid.*, II, 72-73, 132-133.

<sup>96</sup> *Ibid.*, III, 243; Greene, *The Provincial Governor*, 82; also, *ibid.*, 24, 25.



king or the proprietor, but on the nomination of the governor, who gained thereby considerable influence with them.<sup>97</sup> Some governors had the power to appoint councillors,<sup>98</sup> and others had the authority to fill vacancies pending an appointment from England. Furthermore, some governors had power to suspend councillors and were in a position to secure their removal.<sup>99</sup> Under such circumstances as these, the power of the governor was likely to be less open to challenge than where, as in Massachusetts, the members of the council were chosen by joint ballot of the two houses of the General Court, the governor having a veto power only.<sup>100</sup> Clearly, the less influence the governor had in the selection and removal of councillors, the more independence they were likely to exhibit.

When the newly created states formed constitutions, during and after the Revolution, many continued to associate a council with the governor for the conduct of executive business. The same sort of procedure continued, whereby the governor did his work in council and by and with its advice given orally.<sup>101</sup> But

<sup>97</sup> Greene, *The Provincial Governor*, 30-31.

<sup>98</sup> W. J. Rivers, *A Sketch of the History of South Carolina to the Close of the Proprietary Government by the Revolution of 1719* (Charleston, 1856), 292-293.

<sup>99</sup> Greene, *The Provincial Governor*, 74-75.

<sup>100</sup> *Ibid.*, 76-78.

<sup>101</sup> See, for example, *Journal of the General Assembly of the State of Vermont Begun and Held at Middlebury, . . . October ninth, one thousand eight hundred* (Bennington, 1801), *passim*.



though the procedure was similar to that of colonial days, there had been an alteration in the balance of power between the governor and his council. The governor no longer had the power of appointment or removal. In most cases, the legislature, "the foundation of all government," appointed the council, and virtually controlled it. The influence of the governor over its deliberations was correspondingly decreased, and its advice was the more independent for that reason. Not infrequently members of the legislature were members of the council, and in New Jersey, for example, the council was the upper chamber of the legislature.<sup>102</sup> In many cases the governor was virtually controlled by the "advice and consent" of the council.

In associating the President with the Senate, then, the framers of the Constitution were using a device familiar to them in colonial history,—the union of the executive with the upper chamber of the legislature in the conduct of certain sorts of business. They were employing an expedient which had been carried over into some of the state governments, and as in the state governments, they saw to it that the advisory body should be independent of the President. The Senate was chosen without any influence whatever by the

<sup>102</sup> Thorpe, *Constitutions and Charters*, I, 562, Delaware; II, 778, Georgia; III, 1695, Maryland; III, 1904, Massachusetts; IV, 2452, 2465, New Hampshire; V, 2594, New Jersey; V, 2791, North Carolina; V, 3086, Pennsylvania; VI, 3742, 3754, Vermont; in South Carolina and Virginia there was a "privy council," VI, 3244, 3249; VII, 3817; and see C. H. Van Tyne, *The American Revolution* (New York, 1905), 144-145.

President. He had no veto like that enjoyed by the colonial governor of Massachusetts. The Senate, consequently, might be expected to pursue a course more independent than had any of the colonial councils. It would have a position more nearly analogous to the councils of governors in the states. Indeed, as we shall see, the failure to give the President any influence in the selection of those with whom he was joined in making appointments and treaties led some early commentators to say the President would become the tool of the Senate. It was to be presumed, therefore, that the phrase "advice and consent" might mean much more than the words usually connote.

That the framers of the Constitution had in mind this relationship is evidenced by the frequent references to the Senate as a council of the President in discussions of the Constitution by men who were members of the Convention.<sup>103</sup> George Mason "apprehended a council would arise out of the Senate."<sup>104</sup> Luther Martin also spoke of the Senate as the President's council.<sup>105</sup> It may fairly be said that it was "a plausible and common assumption that the Senate,

<sup>103</sup> Madison spoke of it, in another connection, during the Convention. Farrand, Records, II, 627.

<sup>104</sup> Elliot, Debates, III, 494. He also said, "It has been wittily observed that the Constitution has married the President and the Senate—has made them man and wife. I believe the consequence that generally results from marriage will happen here. They will be continually supporting and aiding each other: they will always consider their interest as united." Ibid., 493.

<sup>105</sup> In the Maryland House of Representatives, Nov. 29, 1787, Farrand, Records, III, 158.

composed at the start of no more than twenty-six members and closely associated with the President by the letter of the Constitution in the making of treaties and in appointments, would serve as a council to the President." <sup>106</sup>

The phrase "by and with the advice and consent of the Senate" must be interpreted in the light of these facts. It is, palpably, an elastic phrase which might cover a multitude of relationships. But it clearly implied a very close union and had usually—almost invariably—meant personal contact. It is of the nature of a council that even if the president lays propositions before it, the members have a wide range of power in making suggestions and voting modifications. That had been the practice in the colonies and in the states, and especially where the consent of the council was a prerequisite to definitive action. Moreover, the practice of colonies and states under this phrase had not always given the governor a monopoly of even the formal initiative; members of the council had often been free to initiate action. The employment of the phrase might well leave the Senate free to play an active part in instituting negotiations and in shaping them during their progress.

Without doubt the framers regarded the Senate as at least an equally important factor with the President in foreign relations. This is evidenced not merely by the slender consideration given to the President's participation, but also by the somewhat elaborate discus-

<sup>106</sup> Learned, *The President's Cabinet*, 85.

sion of the majority required in the Senate and the share which the House of Representatives might have. These cover the points which were warmly debated. The discussion, moreover, reveals a complete confidence in the capacity of the Senate to do secret business. It was doubtless anticipated that a Department of Foreign Affairs would conduct the routine work, but, save in connection with Morris's abortive plan for a council of state, there is no indication that any alteration was expected in the practice by which instructions, treaty projects,—in fact every detail,—had been submitted to Congress. It was assumed that the Senate in the new government would perform the same functions in this regard as the Congress in the old. There is no hint that the President should have confidential powers beyond those of the Senate; in every mention of the matter emphasis was laid upon the function of the Senate as the repository of secret business. Whatever was expected to be confidential in character was confided to the Senate.

This interpretation, that the dominance which the President has acquired in the management of foreign affairs was largely unforeseen and that the opportunity was opened virtually through accident, squares well with early commentary and with practice in the early days of the government.

II. *The "Federalist"*

Even Hamilton, writing the "Federalist," did not claim treaty-making as an executive function. "Though several writers on the subject of government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition; for if we attend carefully to its operation, it will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them."<sup>107</sup> It is interesting and suggestive to note that Locke, whose influence upon the political thought of the day is well known, did not regard the conduct of foreign affairs as executive in character. He argued that it was neither executive nor legislative but "federative" business. The federative branch was to have "the management of the security and interest of the public" in dealing with other states, and contained "the power of war and peace, leagues and alliances." He recognized that the executive was usually connected with the ordinary conduct of federative business, but held the legislative to be "supreme" over both the executive and the federative power.<sup>108</sup>

In one of his papers Jay emphasized the necessity for a part which could best be played by the President. "It seldom happens in the negotiation of treaties, of

<sup>107</sup> The Federalist, ed. H. C. Lodge (New York, 1911), No. LXXV, 466; see whole article.

<sup>108</sup> John Locke, Two Treatises on Government, Book II, Chaps. XII, XIII.

whatever nature, but that perfect *secrecy* and immediate *despatch* are sometimes requisite. . . . As in the field, so in the cabinet, there are moments to be seized as they pass, and they who preside in either should be left in capacity to improve them. So often and so essentially have we heretofore suffered from the want of secrecy and despatch, that the Constitution would have been inexcusably defective, if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most despatch, are those preparatory and auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation. For these, the President will find no difficulty to provide.”<sup>109</sup> Hamilton still thought of the President, as he had at the time of his June speech, as in charge of general foreign business. “The actual conduct of foreign negotiations” is one of the functions which “constitute what seems to be most properly understood by the administration of government.”<sup>110</sup>

The discussion in the “Federalist,” however, contains no hint of the practice which developed in the course of time, by which the President, taking no formal counsel with the Senate, proceeds independently until the treaty is signed. Every implication is in the other direction. The power of making treaties is a “joint” power. This expression is used more than

<sup>109</sup> Federalist, No. LXIV, 403-404.

<sup>110</sup> Ibid., No. LXXII, 450.

once.<sup>111</sup> Again, in contrasting the President with the British king, Hamilton said, "The one would have a concurrent power with a branch of the legislature in the formation of treaties; the other is the *sole possessor* of the power of making treaties."<sup>112</sup> Hamilton clearly implied that "it would often be necessary to keep them together when convened, to obtain their sanction in the progressive stages of a treaty."<sup>113</sup> There are, indeed, indications that the writers of the "Federalist" thought that initiative in policy was at least equally in the hands of the Senate. "The convention might with propriety have meditated the punishment of the Execu-

<sup>111</sup> "The JOINT AGENCY of the Chief Magistrate of the Union, and of two thirds of the members of a body selected by the collective wisdom of the legislatures of the several States, is designed to be the pledge for the fidelity of the national councils in this particular." Ibid., No. LXVI, 417. "It must indeed be clear to a demonstration that the joint possession of the power," etc. Ibid., No. LXXV, 468.

<sup>112</sup> Ibid., No. LXIX, 435. The two were to work together in Jay's view. When the President, through his control of "the business of intelligence," finds that circumstances occur which require "the advice and consent of the Senate, he may at any time convene them." Ibid., No. LXIV, 403-404.

<sup>113</sup> This occurs in an argument against admitting the House of Representatives to a share in treaty-making. Such a share would require the procedure described in the quotation. It is clear that that is what he expected of the Senate. Federalist, No. LXXV, 469. The same implication is in the statement: "As this body has a concurrent power with the Executive in the article of treaties, it might often be necessary to call it together with a view to this object, when it would be unnecessary and improper to convene the House of Representatives." Ibid., No. LXXVII, 481.



tive, for a deviation from the instructions of the Senate. . . . So far as might concern the misbehavior of the Executive in perverting the instructions or contravening the views of the Senate, we need not be apprehensive of the want of a disposition in that body to punish the abuse of their confidence, or to vindicate their own authority. We may thus far count upon their pride, if not upon their virtue."<sup>114</sup>

The same idea is discernible in one of the papers written by John Jay. He objected to the House of Representatives having a part, because it was "composed of members constantly coming and going in quick succession." The business of foreign relations, said he, was such as required "to be steadily contemplated in all their relations and circumstances. . . . It was wise, therefore, in the convention to provide, not only that the power of making treaties should be committed to able and honest men, but also that they should continue in place a sufficient time to become perfectly acquainted with their national concerns, and to form and introduce a system for the management of them."<sup>115</sup> It is difficult to extract any meaning from that passage unless one is willing to think of the Senate as a body capable of initiating policies in connection with foreign affairs.

<sup>114</sup> Federalist, No. LXVI, 417-418. There is no intention to overweigh the significance of this passage to make the Senate appear to have more than "concurrent" power. See *ibid.*, No. LXXV, 467-468.

<sup>115</sup> *Ibid.*, No. LXIV, 402.

The longer one reflects upon the discussions of this matter in the "Federalist," the more certain it seems that the authors envisaged President and Senate working together in the formulation of policies, in the appointment of diplomatic officers, in the drafting and approval of instructions, in the discussion of negotiations during their progress, and in placing the stamp of approval upon the work when completed. No other interpretation makes their statements intelligible. No other avoids the "solecism" that Dr. Johnson had pointed out as involved in the proposition that a minister should be given plenipotentiary powers by one body but be expected to gain approval from another. The power over recognition and the other powers which have grown from the right to receive ambassadors and other ministers from abroad were not foreseen. "This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government." Hamilton made the reception of ambassadors by the President a mere matter of convenience.<sup>116</sup>

### III. *The Ratifying Conventions*

The impression left by a study of the debates in the state conventions, called for the purpose of ratifying the Constitution, is not so clear and definite as that left by the "Federalist." It is not surprising, because there is such a great difference in the nature of the

<sup>116</sup> Ibid., No. LXIX, 433.

two sources. Instead of a reasoned, systematic, and coherent interpretation and defense, there is every sort of material, from attack to eulogy. The reports of many of the conventions, moreover, are so fragmentary as to furnish only a slight gauge of sentiment. However, one can glean certain impressions as to the weight of sentiment and there are many reasoned expressions of opinion.

James Monroe, speaking in the Virginia convention, regarded the Senate as fully possessed of initiative in the direction of foreign relations. The business of the Senate is to "direct the affairs of the executive. . . . Consider the connection of the Senate with the executive. Has it not an authority over all the acts of the executive? What are the acts which the President can do without them?"<sup>117</sup> In the same spirit, Fisher Ames, speaking in the Massachusetts convention, said of the Senators, "It need not be said that they are principally to direct the affairs of wars and treaties."<sup>118</sup> Monroe and Ames felt that the Senate was to be the principal force.

R. R. Livingston, who had been Secretary of Foreign Affairs under the Confederation, had much the same conception of the position of the Senate as a policy-forming body that Jay, his successor in the office, had had when writing the "Federalist." Speaking in the New York convention, Livingston said, "It is not contended that six years are too long a time for the

<sup>117</sup> Elliot, *Debates*, III, 221.

<sup>118</sup> *Ibid.*, II, 46.

senators to remain in office. Indeed, this cannot be objected to, when the purposes for which this body is instituted are considered. They are to form treaties with foreign nations. This requires a comprehensive knowledge of foreign politics, and an extensive acquaintance with characters, whom, in this capacity, they have to negotiate with, together with such an intimate conception of our best interests, relative to foreign powers, as can only be derived from much experience in the business.”<sup>119</sup>

Hamilton expressed himself in the same tenor as in the “Federalist”: “If you consider but a moment the purposes for which the Senate was instituted, and the nature of the business which they are to transact, you will see the necessity of giving them duration. They, together with the President, are to manage all our concerns with foreign nations; they must understand all their interests, their political systems. This knowledge is not soon acquired; but a very small part is gained in the closet. Is it desirable, then, that new and unqualified members should be continually thrown into that body? When public bodies are engaged in the exercise of general powers, you cannot judge of the propriety of their conduct, but from the result of their systems. They may be forming plans which required time and diligence to bring to maturity. It is necessary, therefore, that they should have a considerable and fixed duration, that they may fix their calculations accordingly. . . . Considering the Senate, therefore,

<sup>119</sup> *Ibid.*, 291.

with a view to responsibility, duration is a very interesting and essential quality.”<sup>120</sup>

The same idea of the Senate as a policy-shaping body was expressed by James Iredell, in the North Carolina convention. “Foreign negotiations . . . will form one part of the business of the Senate. I hope we shall not be involved in the labyrinths of foreign politics, but it is necessary for us to watch the conduct of European powers, that we may be on our defense and ready in case of an attack. All these things will require a continued attention. . . . The business of a senator will require a great deal of knowledge, and more extensive information than can be acquired in a short time.”<sup>121</sup> The expectation that the Senate, “the great anchor of the government,”<sup>122</sup> would be fully acquainted with every step and phase of the negotiation, as had been the case with Congress under the Confederation, appears incidentally a number of times. Nathaniel Gorham, for example, spoke of the necessity of a secret journal of the Senate, to contain such things as the “extent of powers vested in our ambassador” for conducting a negotiation.<sup>123</sup> The same confidence in the capacity of the Senate to do secret business, which

<sup>120</sup> Elliot, *Debates*, II, 306-307.

<sup>121</sup> *Ibid.*, IV, 41.

<sup>122</sup> Madison to Jefferson, Oct. 24, 1787, Farrand, *Records*, III, 133.

<sup>123</sup> Elliot, *Debates*, II, 52. George Mason, speaking of the same clause, complained, “This enables them to keep the negotiations about treaties secret. Under this veil they may conceal anything and everything.” *Ibid.*, III, 404.

was exhibited by the members of the Philadelphia Convention, also appears repeatedly.<sup>124</sup>

The "Federalist" had laid emphasis upon the joint possession of power by the President and Senate. That thought found expression in the debates in the several state conventions. Francis Corbin, in the Virginia convention, spoke of the treaty power as "given to the President and the Senate . . . conjointly. In this it differs from every other government we know."<sup>125</sup> Thomas McKean, in the Pennsylvania convention, said, the Senators "are joined with the President in concluding treaties, it therefore behooves them to be conversant with the politics of the nations of the world, and the dispositions of the sovereigns and their ministers."<sup>126</sup> The Senate being possessed of joint authority and "a constant body, almost continually sitting," George Mason feared that the President would become "a tool to the Senate."<sup>127</sup>

Mason was thinking of the Senate as a council to the President, a commonplace conception at the time. James Monroe, speaking in the Virginia convention, criticized the provisions for the impeachment of the President because he would be tried "by his own council."<sup>128</sup> Gilbert Livingston, in the New York conven-

<sup>124</sup> For example, *ibid.*, 404, 509; IV, 280.

<sup>125</sup> *Ibid.*, III, 509-511.

<sup>126</sup> *Ibid.*, II, 533.

<sup>127</sup> *Ibid.*, I, 494-495.

<sup>128</sup> *Ibid.*, III, 220; see also *ibid.*, 489.



tion, described the Senate in the same way.<sup>129</sup> George Clinton, in his "Letters of Cato," referred to the Senate as the President's council, and said: "That the president and senate are further improperly connected will appear, if it is considered that their dependence on each other will prevent either from being a check upon the other; they must act in concert, and whether the power and influence of the one or the other is to prevail, will depend on the character and abilities of the men who hold those offices at the time. The senate is vested with such a proportion of the executive that it would be found necessary that they should be constantly sitting."<sup>130</sup>

While the preponderant sentiment was that President and Senate would have equal power, there were occasional assertions that the President would play a leading rôle. It is in connection with a defense of the Constitution against the charge that the Senate was given too much power that Wilson, of Pennsylvania, made a statement which glances, at least, in the direction of the practice that has grown up. Trying impeachments and concurring with the President in treaties and appointments,—“these are the powers that are slated as improper. It is fortunate that, in the extent of every one of them the Senate stands controlled. If it is that monster which it is said to be, it can only

<sup>129</sup> Elliot, Debates, II, 287; and for similar statement by Grayson, of Virginia, *ibid.*, III, 491.

<sup>130</sup> P. L. Ford, *Essays on the Constitution of the United States Published during its Discussion by the People* (Brooklyn, 1892), 274-275.



show its teeth; it is unable to bite or devour. . . . The Senate can make no treaties: they can approve of none, unless the President of the United States lays it before them." <sup>131</sup> Another statement implying executive leadership and indicating that the function of the Senate was to be merely that of ratification came from William R. Davie, of North Carolina. He held treaty-making to be an executive function, "but that jealousy of executive power which has shown itself so strongly in all the American governments, would not admit this improvement." It was "the extreme jealousy of the little states" which "made it indispensable to give to the senators, as representatives of the states, the power of making, or rather ratifying treaties." <sup>132</sup>

Speaking in the legislature of South Carolina, January 16, 1788, Charles Cotesworth Pinckney recounted various propositions for the location of the power to make treaties and the reasons for abandoning them. "At last it was agreed to give the President a power of proposing treaties, as he was the ostensible head of the Union, and to vest the Senate (where each state had an equal voice) with the power of agreeing or disagreeing to the terms proposed. . . . On the whole, a

<sup>131</sup> Elliot, *Debates*, II, 466; see also *ibid.*, 477; and for fuller explanation of the same point of view by Wilson, also in defense of the Senate's participation, see *ibid.*, 505.

<sup>132</sup> *Ibid.*, IV, 119-20. J. J. Pringle, speaking in the South Carolina legislature, said, "The making of treaties . . . properly belongs to the executive part of government," but the context implies that the Senate was, in his view, part of the executive. *Ibid.*, 269.

large majority of the Convention thought this power would be more safely lodged where they had finally vested it, than anywhere else. It was a power which must necessarily be lodged somewhere: political caution and republican jealousy rendered it improper for us to vest it in the President alone; the nature of negotiation and the frequent recess of the House of Representatives, rendered that body an improper depository of this prerogative. The President and Senate joined were, therefore, after much deliberation, deemed the most eligible corps in whom we could safely vest the diplomatic authority of the Union."<sup>133</sup> Aside from these expressions of opinion, no others of which we have record anticipated as clearly the leading rôle which the President was to play.

Reviewing the debates in the ratifying conventions, the most striking fact is the small amount of attention given to foreign affairs. As in the Philadelphia Convention and in the "Federalist," there is very little discussion of any phase of foreign relations except in connection with the making of treaties; and as in both those cases the amount of time given to the question of making treaties is very small in proportion to the whole time. The second fact of interest is that the Senate was more in the minds of the delegates to the conventions than was the President. Besides the discussion which has been quoted, there is another gauge of that fact. Where opinions were especially vigorous, members of the conventions were likely to propose amend-

<sup>133</sup> Elliot, Debates, IV, 265; Farrand, Records, III, 251-252.

ments to the Constitution. Such amendments as were proposed for changing the provisions of the Constitution, with regard to the treaty power, related not to the power of the President, but to the majority necessary in the Senate, or to the participation of the House of Representatives.<sup>134</sup>

#### IV. *Early Practice*

The earliest practice of the government is significant in any effort to interpret the meaning of the framers. Washington took it for granted that there would continue to be an office of foreign affairs. There was every warrant for that assumption.<sup>135</sup> He had John Jay "continue, though not officially, to superintend the Department of Foreign Affairs until relieved by a successor."<sup>136</sup> Save for the fact that Washington came into the matter, it is difficult to perceive any significant break in practice from the time Jay took office in 1785, until he relinquished control to Jefferson, nearly a year after the new government was established.

During his incumbency the office over which he presided was reorganized. As had been the case in all the previous reorganizations, the work was done by Congress,—this time by the new Congress under the Con-

<sup>134</sup> Elliot, *Debates*, II, 546; III, 660; and see *ibid.*, II, 553, for one limiting the authority of treaties to "repeal or abrogate the constitutions or bills of rights of the states."

<sup>135</sup> Learned, *The President's Cabinet*, Chaps. II, III, IV, *passim*.

<sup>136</sup> Quoted, Hunt, *Department of State*, 80.

stitution, without executive leadership or suggestion. The debate upon the establishment of this office has been studied many times. But some features of it still deserve comment. This discussion has been used as furnishing an accurate reflection of the intention of the framers of the Constitution as to the President's control over foreign affairs.<sup>137</sup> It is true that there are many of the same opinions and tendencies that appeared in the Convention. For one thing, the debate did not concern itself with broad questions and with broad definitions. It was concentrated, almost to the exclusion of every other topic, upon the question whether the President had power to remove the head of the department. This involved the question of his control, and the part which the Senate was to play—but the problem was approached thus obliquely and not directly through a discussion of the powers, duties, and functions of the new secretary. Of that there was practically none.

There appears, also, the notion that the business of foreign affairs was not one of permanent importance. Near the close of the debate, "Mr. Carroll proposed a clause, limiting the operation of the act, under a hope that a time would come when the United States would be disengaged from the necessity of supporting a Secretary of Foreign Affairs. He thought the policy of limiting establishments, in their nature not always necessary, evident to every thinking mind; and he hoped Congress would pursue the principle on this and

<sup>137</sup> Thach, *Creation of the Presidency*, 141-143, 159.

every similar occasion. He viewed the natural situation of this country as some security against our being drawn into the vortex of European politics; but the present bill afforded a means of attraction which it was prudent to guard against."<sup>138</sup> This proposal attracted some support, but it was defeated, partly because of the method Carroll had selected.<sup>139</sup> Nevertheless, his proposal had an effect.

Boudinot, who had introduced the whole question of executive departments, said the action proposed by Carroll was unnecessary, since "the House always had the officer in their power, because they could limit his salary, or determine it altogether, if they judged proper."<sup>140</sup> Carroll's sympathizers thereupon moved to strike out the clause respecting salary, in order that the House might be able to destroy the department at will. This proposal carried,<sup>141</sup> and the bill as enacted had no provision for salary embodied in it. This same idea,—that the Department of Foreign Affairs would not be a heavily burdened department,—cropped up again when it was proposed to establish a Home Department. When the three executive departments,—Foreign Affairs, Treasury, and War,—had been established, there were some duties left over. Vining attempted to have them assigned to a fourth department, but "Mr. Huntington thought the Secretary of Foreign

<sup>138</sup> *Annals of Congress*, 1 Cong., I, 576.

<sup>139</sup> *Ibid.*, 578.

<sup>140</sup> *Ibid.*, 577.

<sup>141</sup> *Ibid.*

Affairs was not so much overcharged with business but that he might attend to the major part of the duties mentioned in the resolution."<sup>142</sup> While this proposal was defeated for the moment,<sup>143</sup> it furnished the ultimate solution.<sup>144</sup>

But if it be true that the members of the first Congress had as little conception as did the members of the Convention of the important part which international relations were to have in the history of this country, it is equally true that on some matters their ideas were not the same. The Constitution had been before the nation twenty months. During that period discussion had been continuous; criticism had been levelled at certain features of the Constitution, and the first Congress was concerned not only to offer amendments, but to interpret the Constitution in a spirit to quiet the criticism which still raged. The ideas of some of the members of the Convention had changed markedly. None had undergone a more interesting revolution than those of Madison, who took the lead in the debate on the establishment of executive departments. The attitude he assumed with reference to presidential control of the Department of Foreign Affairs in 1789 cannot be squared with his ideas of the Senate making a treaty of peace without the concurrence of the President in 1787.

It is interesting, in this connection, to remark that

<sup>142</sup> *Annals of Congress*, 1 Cong., I, 667.

<sup>143</sup> *Ibid.*, 669.

<sup>144</sup> Hunt, *Department of State*, 70-74.



although this was a debate on constitutional interpretation, and although it was participated in by men who had been members of the Convention, there is no reference to the discussions of that body or to the decisions of its committees. True, they were not yet public property, but the journal and other papers were held by Washington, "subject to the order of Congress,"<sup>145</sup> and the members were not without memories which might have been summoned to their aid, if any could be furnished from that source. Instead, they took the words of the printed Constitution and interpreted them from the point of view not of the framers in 1787, but from the point of view which had been developed through nearly two years of discussion. They spoke frequently of the principles involved in the decisions of the Convention, but they spoke about as often of the criticisms and discussions which had filled the air for many months.

During those two years the supporters of the executive had gained in confidence. The election of Washington, though it had been anticipated, had, perhaps, done something to increase that confidence. During those discussions the Senate had often been the object of criticism, and this discussion was tinged with the feeling on the part of a large group that the Senate had too much power. Where there was doubt as to interpretation, the executive rather than the Senate was likely to get the benefit of the doubt. And the question of the power of removal was a doubtful one.

<sup>145</sup> Farrand, Records, I, xi.



Hamilton, writing in the "Federalist," had said, "The consent" of the Senate "would be necessary to displace as well as to appoint. A change of the Chief Magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the government as might be expected, if he were the sole disposer of offices. Where a man in any station had given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change in favor of a person more agreeable to him, by the apprehension that a discountenance of the Senate might frustrate the attempt, and bring some degree of discredit upon himself."<sup>146</sup>

Madison, though he argued strongly that the President should have the power of removal, admitted that it was a doubtful matter,<sup>147</sup> and there was no consensus among those who had been members of the Convention. Sherman held that "the officer is the mere creature of the Legislature, we may form it under such regulations as we please, with such powers and duration as we think good policy requires."<sup>148</sup> Baldwin agreed with Madison,<sup>149</sup> as did Clymer.<sup>150</sup> Gerry strenuously opposed Madison's conception and sought to have the bill fix a term of years, defining the tenure of the officer in that way.<sup>151</sup> Carroll, Fitzsimmons, and

<sup>146</sup> Federalist, No. LXXVII, 476-477.

<sup>147</sup> Annals of Congress, 1 Cong., I, 461, 495, 547.

<sup>148</sup> Ibid., 492.

<sup>149</sup> Ibid., 556-560.

<sup>150</sup> Ibid., 489-490.

<sup>151</sup> Ibid., 534-537, 577.

Gilman did not speak on this topic, and the issues on the various recorded ballots were sufficiently confused to prevent any certain index of their opinions on the point in question. Arguments based upon political expediency, and others based upon various theories of government, especially the separation of powers and executive responsibility, were inextricably mingled with constitutional interpretation. Presumably these men supported Madison; in any event they voted for the bill; Sherman and Gerry did not.<sup>152</sup>

The Senate debate is not recorded. But it can be followed to some extent in private compilations. There were the same differences of opinion in the Senate, and the same division among the men in the Senate who had been in the Convention. Six of the members of the Senate who had been members of the Convention voted for the bill, and four against.<sup>153</sup> The vote on the bill in the Senate was a tie, John Adams, the Vice-President, casting the deciding vote in its favor.<sup>154</sup>

<sup>152</sup> Ibid., 580, 585, 591.

<sup>153</sup> Thach, *Creation of the Presidency*, 155-158.

<sup>154</sup> Jameson, *Essays in Constitutional History*, 178; *Works of John Adams*, ed. C. F. Adams (Boston, 1853), VIII, 494. In casting this vote, Adams had an opportunity to carry out, in part, an idea he had long held. Writing to Jefferson, Dec. 6, 1787, he said, "You are apprehensive of monarchy, I, of aristocracy. I would, therefore, have given more power to the president, and less to the senate. The nomination and appointment to all offices, I would have given to the president, assisted only by a privy council of his own creation; but not a vote or voice would I have given to the senate or any senator unless he were of the privy council." Ibid., 464.

This was constitutional interpretation, and interpretation of a very important and effective sort. But it was not an interpretation which we can accept as an accurate reflection of the desire of the framers. While it is true that members of the Convention were in the Senate and House, it is not provable that they were a fair sample of Convention opinion. The fact that in the Convention voting was by states, and that in Congress it was by individuals adds another element of doubt. Moreover, it is demonstrable that some members, certainly Madison and Paterson, had a fresh outlook upon the problem, and presumably none of them were left untouched by the discussions and events of the last year and a half. The closeness of the vote, the admitted doubts as to the true meaning and purpose of the Constitution,—these also impair the value of this debate as a reconstruction of the mind of the Convention. This vote, moreover, like every other, did not represent a consensus of opinion upon every phase of the issue. Some voted for the bill on constitutional grounds, some on grounds of political expediency, and some because it agreed with their ideas of sound administrative procedure.

The result of this debate was a statute which made the Secretary of Foreign Affairs, or Secretary of State, an assistant to the President. He was to "conduct the business of the said department in such manner as the president of the United States shall, from time to time, order or instruct." One can gain some conception of

what was regarded as executive business by a comparison of this act with the acts of the Congress of the Confederation with reference to the Department of Foreign Affairs. Both the act of 1782 and of 1789 gave to the secretary custody and charge of the books, records, and other papers that related to the business of the department. Under the new act, as under the old, all correspondence and all instructions were to pass through the department. The old provision, "that letters to the ministers of the United States, or ministers of foreign powers, which have a direct reference to treaties or conventions proposed to be entered into, or instructions relative thereto, or other great national subjects, shall be submitted to the inspection and receive the approbation of Congress before they shall be transmitted," had disappeared.

The only qualifying clause in this connection is that the President is to prescribe the duties of the secretary in a manner "agreeable to the Constitution." The phrase defies certain interpretation. It may be read to mean that these functions have been assigned to the President by the Constitution,—becoming, if so read, the same sort of legislative interpretation of the Constitution as appears elsewhere in the act where the removal power is mentioned. On the other hand, it may be read as a limitation upon the President, who is to prescribe the duties in accordance with the Constitution, referring perhaps to senatorial advice and consent to correspondence or instructions "which have a

direct reference to treaties or conventions proposed to be entered into.”<sup>155</sup>

Both the law of 1782 and that of 1787 gave the secretary charge over the memorials or other applications from foreign public ministers, or other foreigners, and permission to “concert measures with the ministers or officers of foreign powers, amicably to procure the redress of private injuries, which any citizen of the United States may have received from a foreign power or the subjects thereof.” In both cases the secretary was expected to glean information, commercial, financial and political, which might be useful to the United States. In the one case the secretary was to “hold his office during the pleasure of Congress”; in the other he could “be removed from office by the President of the United States.” The duties of the office were not made strikingly different. The change was in substituting the President for Congress as the supervisory authority. Not much less could have been done, unless the Senate had been associated with the President in removals, and given some explicit recognition in the matter of treaty instructions and negotiations.

The control given to the President by this act is an important fact. The debate in the House of Representatives gives the impression that the majority sought an interpretation which would reduce the power of the Senate to the lowest constitutional limits, and expand

<sup>155</sup> The quoted words are from the act of 1782. *Jol. Cont. Cong.*, XXII, 88-89.

that of the President as much as possible. John Adams was accused, after giving the casting vote in favor of the bill in the Senate, "of deciding in favor of the power of the prime, because I look up to that goal."<sup>156</sup> The truth is that the power of the President had been growing during the period from 1787 to 1789,—before the office was set up. It was still growing,<sup>157</sup> and this act is only fresh evidence of the fact. This statute was a first step along the path that was to lead to executive leadership.

On the other hand, it would be easy to exaggerate the intention of those who framed the law. They did not, as a matter of fact, foresee the developments which were to grow out of it. Take, for example, the power of removal which this act recognized as within the power of the President. No one suggested that it meant that the secretary was to hold merely at the pleasure of the President. It was anticipated that he would be displaced only for cause. Madison, for example, who took the lead in arguing for this power, said it would be an "abuse of his power" if the President wantonly removed meritorious officers; "he will be impeachable by this House, before the Senate for such an act of mal-administration; for I contend that" such an act "would subject him to impeachment and removal from his own high trust."<sup>158</sup> In similar fash-

<sup>156</sup> Adams, Works, VIII, 494.

<sup>157</sup> See, on this point, Salmon, History of the Appointing Power of the President, 22-23.

<sup>158</sup> Annals of Congress, 1 Cong., I, 498. There is an interesting passage in the debate which is not sufficiently clear to be men-



ion, the framers of this act could not foresee that the Senate would virtually give up its check upon appointments and adopt the practice of usually confirming the President's nominee without careful investigation of his qualifications. Through the whole discussion this power of the Senate to "check" the President in the matter of appointments was held to be of importance. Madison emphasized this in the argument which has just been quoted. The change in practice in these two matters has meant a tremendous departure from the intentions of the framers.

However great the control which the President was given over the department, it is obvious that the significance of the control depended upon the actual relationship between the President and Senate in the conduct of foreign affairs. For after all, that was the important relationship, from a constitutional point of view. And the fact is that the passage of this act marks no period in the relations of President and Senate. There is absolutely no perceptible change which is assignable to this act. The bill passed the Senate July 18, 1789, and became a law July 27. On

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tioned in the text. Jackson, of Georgia, opposing the power of removal by the President, said, "It is admitted, that in cases of ambassadors and public ministers, it would be improper to recall them without the concurrence of the Senate; because the Senate are combined with the President, and strongly too, in the objects of their negotiations. How then can gentlemen discriminate?" *Ibid.*, 555. This was not answered or denied. But neither can the admission be found. It would be interesting to know who admitted it and how generally it was credited.



July 21, Jay was requested to attend the Senate on the next day "and bring with him such papers as are requisite to give full information relative to the consular convention between France and the United States." Jay attended, as he had so often in the old Congress, "made the necessary explanations," and was directed to make a report stating his opinion as to how far the faith of the United States was "engaged, either by former agreed stipulations, or negotiations . . . , to ratify in its present sense or form, the convention now referred to the Senate." And he did so.<sup>159</sup>

A month later, August 22, Washington and Secretary of War Knox made their famous visit to the Senate to confer with the members of that body on the matter of a treaty to be negotiated with the Southern Indians. The President had already broached the matter to Congress; an appropriation had been made to cover the expenses; he had sent to the Senate the names of proposed commissioners, and the Senate had approved.<sup>160</sup> Even then he did not take his control of the Secretary of War, which was precisely like that over the Secretary of Foreign Affairs, as warrant to direct him to prepare instructions for the commissioners and go forward with the negotiation. He felt it necessary and proper to discuss with the Senate the bases for the instructions and negotiations.<sup>161</sup>

<sup>159</sup> *Annals of Congress*, 1 Cong., I, 51, 52, 53.

<sup>160</sup> Hayden, *Senate and Treaties*, 21.

<sup>161</sup> The fact that this was a treaty with Indians and not with

It is important to observe that it was after the passage of the act creating the Department of Foreign Affairs that the President and Senate formally undertook to consider their method of cooperation in foreign affairs. And they appear to have considered it and reached a conclusion without once referring to this statute. In the memoranda which he made of the "sentiments" he expressed to the Senate committee appointed to confer with him, Washington has left a record of his own conception of the relations between the President and the Senate. It is in perfect agreement with the interpretation which has been developed in this discussion. The Senate was a "council" when engaged in business with the President. But the matter of appointment and the matter of treaties were different. "In the appointment to offices, the agency of the Senate is purely executive. . . . In treaties, the agency is perhaps as much of a legislative nature." His opinion on this point is an interesting confirmation of the view that foreign affairs were not wholly executive in character.

This difference between appointments and treaties, he thought, would be reflected in the manner of the communications of the President and the Senate with each other. "With respect to nominations . . . they

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a foreign nation has no significance. The President and Senate had decided that the practice was to be the same in both cases. On this point, see Hayden, *Senate and Treaties*, 14-16; and message of Washington, *Senate Executive Journal*, I, 26-27, there cited.

had best be made by written messages." Before making nominations for diplomatic positions, consultation with the Senate might be necessary. "Oral communications may be proper . . . for discussing the propriety of sending representatives to foreign courts, and ascertaining the grade, or character, in which they are to appear." But after the nomination was formally sent in writing to the Senate, it should deliberate alone, for "it could be no pleasing thing, I conceive, for the President, on the one hand, to be present and hear the propriety of his nominations questioned, nor for the Senate, on the other hand, to be under the smallest restraint from his presence from the fullest and freest inquiry into the character of the person nominated . . . for, as the President has a right to nominate without assigning his reasons, so has the Senate a right to dissent without giving theirs."

"In all matters respecting *Treaties*," on the other hand, "oral communications seem indispensably necessary; because in these a variety of matters are contained, all of which not only require consideration, but some of them may undergo much discussion; to do which by written communications would be tedious without being satisfactory." "On some occasions it may be most convenient, that the President should attend the deliberations and decisions on his propositions; on others that he should not, or that he should not attend the whole of the time. In other cases, again, as in treaties of a complicated nature, it may happen that he will send his proposition in writing, and

consult the Senate in person after time shall have been allowed for consideration. Many other varieties may be suggested as to the *mode* by practice."<sup>162</sup>

The Senate took much the same view as Washington. While it is true that the first set of rules for Senate procedure made no provision for the personal consultation of the President with the Senate, it is equally patent that such consultation was expected. It was regarded as a matter of course.<sup>163</sup> As soon as the subject was discussed with Washington, the committee appointed for that purpose brought in a resolution which provided "that when the President of the United States shall meet the Senate in the Senate chamber, the President of the Senate shall have a chair on the floor, be considered as at the head of the Senate, and his chair shall be assigned to the President of the United States; that, when the Senate shall be convened by the President of the United States at any other place, the President of the Senate and Senators shall attend at the place appointed. The secretary of the Senate shall also attend to take the minutes of the

<sup>162</sup> Writings of George Washington, ed. W. C. Ford (New York, 1891), XI, 417-419; quoted in part, Hayden, *Senate and Treaties*, 18-20; and also J. W. Foster, *The Practice of Diplomacy as illustrated in the Foreign Relations of the United States* (Boston, 1906), 264-265; and see whole of Chap. XIII; also Crandall, *Treaties*, 67-68.

<sup>163</sup> H. C. Lodge, "The Senate," *Scribners Magazine*, XXXIV, 545. For an excellent exposition of the relation of the President and the Senate to each other in the matter of treaties, see passage of speech of Rufus King in the Senate, Jan. 12, 1818, *Farrand, Records*, III, 424-425.

Senate; that all questions shall be put by the President of the Senate, either in the presence or absence of the President of the United States, and the Senators shall signify their assent or dissent by answering *viva voce* AY or NO." <sup>164</sup> When the Senate rules were subsequently revised, the substance of this resolution was incorporated, and the rules of the Senate to this day contemplate occasions when the President shall attend. <sup>165</sup>

This action of Washington and the Senate in 1789 certainly is constitutional interpretation. It represents an effort to work out the machinery of joint action in the spirit of the framers. In accordance with this procedure Washington made his appearance in the Senate. The result was disappointing. It has been remarked that his contact with the Senate on this occasion was reminiscent of difficulties of colonial governors with their councils. <sup>166</sup> While he did not go again in person, he still anticipated communication between the executive and the Senate, for in a message of August 4, 1790,—nearly a year later,—speaking of a secret article in a proposed Indian treaty, he said, "If the Senate should require any further explanation, the Secretary of War will attend them for that purpose." <sup>167</sup>

<sup>164</sup> Washington, Writings, ed. Ford, XI, 419; see Hayden, Senate and Treaties, 20.

<sup>165</sup> Lodge, "The Senate," loc. cit.

<sup>166</sup> Learned, The President's Cabinet, 122.

<sup>167</sup> Quoted, Hinsdale, The Cabinet and Congress, 128. This

Washington set out, in short, to take counsel with the Senate at every step in making treaties with Indians and with foreign nations. He sought advice about entering into negotiations; he nominated the commissioners charged with the business to the Senate; he sent in the proposed instructions for their advice and suggestion; he consulted the Senate upon new propositions made in the course of the negotiations, upon enlarging the powers of the commissions, and upon drafts of individual articles; he offered personal conference through the appropriate executive officer to discuss and elucidate doubtful or intricate points; he asked the Senate in one case, at least, to assist in the interpretation of a treaty, and in another, for advice as to how the provisions of a treaty should be carried out. He sought to make the Senate a true council of advice.<sup>168</sup>

That represented Washington's conception of the intention of the framers. He kept the initiative in the sense that he drew matters to the attention of the Senate and called for its advice. Often, but not always, he sent in a definite proposal for action. But he did not take the initiative in the modern sense of proceed-

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is an interesting point, because it disposes of any tendency to say that Jay and Knox, when they appeared before the Senate, were acting informally,—not as officers of the new government,—and that personal contact was expected to end when the new departments were organized. Washington evidently thought that personal contact would continue.

<sup>168</sup> Much the best study of practice in this period is Hayden, *Senate and Treaties*, Chaps. I-V.



ing with perfect independence until the matter was in draft-treaty form before communicating with the Senate. Moreover, Washington did not originally regard it as improper for communications to be transmitted to Congress from foreign nations. A letter and a packet from the president of the National Assembly of France to the President and members of the American Congress, Washington sent unopened to the Vice President to be opened in the Senate. It was only when Adams returned them "with an opinion of the Senate that they might be opened with more propriety by the President of the United States," that the procedure which was to persist was established.<sup>169</sup>

This effort to make practice conform to the ideas of the framers of the Constitution, as he understood them, broke down. The procedure of personal contact between the President and Senate proved uncomfortable for both. It was not renounced, or formally abandoned; it simply fell into disuse. When the President offered to send a secretary, the Senate did not accept the offer. The House and the Senate declined to allow secretaries to come upon the floor for legislative business, and the personal contact between the two branches ended. The control of the heads of departments which the statutes had given the President led easily and naturally to their development into a council for advice on executive business, in some sense replacing the Senate.

The influence of Jefferson was on the side of sepa-

<sup>169</sup> Correspondence, Hunt, Department of State, 82-84.



ration. He had had no part in drafting the Constitution and brought to its interpretation a point of view different from that of Washington. He advised the President that the Senate need not be acquainted with every detail, taking a broader view of the President's power, hence of his own, than had Washington. The growth of party spirit and rancorous factionalism had its effect. Under all these stresses practice began to change, taking its new direction from force of circumstances. The constitutional phrases had been so broad,—so inadequate a description of intended practices,—that the way was left open for escape from those intentions without running into unconstitutionality.

Finally, Washington found a tradition, though not very firmly rooted, of employing private persons for confidential business in foreign affairs. With this practice both John Jay and Thomas Jefferson were familiar. Jay had glanced at it in one of his papers in the "Federalist" where he spoke of "those preparatory and auxiliary measures" which "require the most secrecy and the most despatch," but "which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation."<sup>170</sup> Jefferson, as minister to France, had employed, without specific authority, private persons for diplomatic business.<sup>171</sup> In addition, Washington, as commander in chief, was accustomed to secret serv-

<sup>170</sup> Federalist, No. LXIV, 403-404.

<sup>171</sup> For example, Thomas Barclay.

ices and a contingent fund for confidential missions. These factors were sufficient to form a basis for the use of executive agents. With the development of presidential control, the availability of money from a contingent fund, the increase in range and complexity of American foreign relations, and the revelation that the Senate could not safely be trusted with secret business, the matter of instruction and negotiation became more and more exclusively presidential. Naturally enough, as that development took place, the agents used became more and more presidential, as well.

### CHAPTER III

## THE CONSTITUTIONAL POSITION OF EXECUTIVE DIPLOMATIC AGENTS

### I. *The Appointing Power*

Early in May, 1917, President Wilson named a group of men, headed by Mr. Elihu Root, to proceed to Russia. On this mission Mr. Root was to have "the rank of ambassador" and a number of his associates the rank of envoys extraordinary and ministers plenipotentiary. Though the Constitution of the United States stipulates that the President "shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers, . . . and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law,"<sup>1</sup> the names of Mr. Root and his associates were not submitted to the Senate. These facts,—the constitutional requirement, and an appointment which appears to disregard it,—thus brought into juxtaposition, bring into sharp relief the problem of the constitutional position of executive diplomatic agents. They may be defined as persons appointed by the executive acting alone. Their powers are derived from, their duties are assigned by, their compensation is determined by, and their position is

<sup>1</sup> Art. II, Sec. 2.

wholly dependent upon the executive power, lodged by the Constitution in the President.

On its face, such an appointment as that of Mr. Root appears to be a plain violation of the explicit terms of the Constitution. Strangely enough, though this question has been under discussion for over a century, it has never been conclusively settled. It has never come before a court.<sup>2</sup> There are, indeed, many judicial decisions pertinent to the matter, but none attempts to define accurately the limitations upon the power of the President to make appointments to diplomatic duties without the consent of the Senate. Congress has frequently debated the question.<sup>3</sup> Once or twice Congress, or one of its branches, has expressed an opinion which has not been without influence upon the executive.<sup>4</sup> But not until the twentieth century did Congress by legislative enactment seek to control the

<sup>2</sup> "I have failed to find any judicial interpretation of the section of the Constitution now under consideration." Attorney General Daugherty to President Harding in opinion of March 8, 1922, United States Documents, Serial 7952, 67 Cong. 2 Sess., Sen. Rpt. 563, 44. See also report of minority of judiciary committee of Senate: "The clause of the Constitution now under discussion has never been judicially construed or applied." *Ibid.*, 35. Henceforth, "United States Documents" will be omitted, and the citation will begin with the serial number. Where the same document is frequently cited, only the serial and document numbers will be used after the first time.

<sup>3</sup> See Chap. IV, Congressional Opinion regarding Executive Agents.

<sup>4</sup> See message of Van Buren to Senate, June, 1838, J. D. Richardson, *A Compilation of the Messages and Papers of the Presidents* (Washington, 1899), III, 477.

President's power of appointment in this connection, though it long since put restraints upon his appointing power in other respects. Finally, no text writer has examined the subject with the care requisite to attempt a statement of how far the power to use special agents in diplomacy may be constitutionally carried; nor have they considered conclusively the status of such agents under our own constitutional law, or international law.

A characteristic discussion of the problems raised by the appointment of executive agents is to be found in E. S. Corwin's "The President's Control of Foreign Relations."<sup>5</sup> "It is difficult to harmonize the practice, considering the dimensions it has today attained, with a reasonable construction of the Constitution. Such agents have been justified as 'secret agents,' yet neither their existence nor their mission is invariably secret. They have been called 'private agents of the President,' his 'personal representatives,' yet they have sometimes been commissioned under the great seal. They have been justified as organs of negotiation and so as springing from the Executive's power in negotiating treaties, yet this is also a normal function of our regular representatives."<sup>6</sup> They have been considered as agents

<sup>5</sup> (Princeton, 1917), 65-66. For a brief but entirely sound discussion, see Q. Wright, *The Control of American Foreign Relations* (New York, 1922), 328-334.

<sup>6</sup> This statement is not precise, for our regular representatives enter into negotiations only on special instructions, and the President makes a separate commission of appointment to negotiate a treaty, even when that task is assigned to the Secretary of State. The word "normal," therefore, is hardly the best one to describe the situation.

appointed for special occasions, but, as we have seen, the term 'public ministers' of the Constitution is broad enough to include all categories of diplomatic agents. Theoretically, perhaps, they could not claim full diplomatic privileges abroad, yet practically, if their identity were known, they would probably be accorded them.<sup>7</sup> In short, the only test which is generally available for distinguishing this kind of agents from the other kind is to be found in the method of their appointment and in the fact that they are generally paid out of the 'contingent fund.' In no other way has the notion of the President's prerogative in the field of foreign relations asserted itself more strikingly."

It will be noted that the passage just quoted reaches no conclusion. It states the problem with a good deal of emphasis but makes no decision. The only hint of a way out is in a footnote<sup>8</sup> which suggests guardedly: "Perhaps it may be said on this basis [that the appointments are transient, occasional, incidental] that 'special agents' of the sort discussed in the text are not only not 'public ministers,' but that they are not 'officers' at all." Apparently the author does not accept this suggestion, for later<sup>9</sup> he says the curtailment of

<sup>7</sup> This statement is not exact. The diplomatic status of special agents is that assigned by the President in any given case. Foreign nations are not privileged to inquire into the constitutionality of an appointment. They must take the credentials at their face value. Theoretically and actually Mr. Root was entitled to the full diplomatic privileges of an ambassador.

<sup>8</sup> Corwin, *President's Control*, 66, n. 44.

<sup>9</sup> *Ibid.*, 120-121.

the "power of the President in appointing 'special agents' is a problem of practical statesmanship rather than of Constitutional Law,"—a conclusion which, in a discussion of a constitutional point, indicates an unsolved problem.

The approach to a solution of this problem must be made through a consideration of the general powers of the President in relation to the conduct of foreign affairs. The clauses of the Constitution which furnish the basis for the control of foreign relations are both brief and bare. They provide no adequate description of the respective powers and duties of the President, the Senate, and the House of Representatives. For their interpretation, the debates in the Constitutional Convention yield, as we have seen, relatively little explanatory material. Furthermore, these sections, so far as the relation of President and Senate are concerned, have not had the great advantages which flow from judicial exposition and interpretation. Consequently, there are few branches of government activity where custom and practice have had so large a share in developing the law of the Constitution. There is some analogy between the assumption of power by the President to control the management of foreign relations, aside from treaties, and the assumption of power by the judiciary to declare laws unconstitutional. But there is also a difference. In the case of the power of the judges, there were repeated assertions during the Convention, by men of many shades of opinion, that the judiciary could and would exercise such power,<sup>10</sup>

<sup>10</sup> Farrand, *Framing of the Constitution*, 157; C. A. Beard,



whereas there were no such expressions concerning the relation of the President to foreign affairs.

Under such circumstances, it is not surprising that there should have been marked variations in practice during the formative years. It has been remarked that Washington set out to act with the Senate at every step in treaty negotiation. But while he sought in this matter to realize the intention of the framers, he did not regard himself as bound absolutely by their presumed intention in matters of procedure. The fact that he discussed with the Senators methods of cooperation is evidence that he and they both regarded it as a problem to be worked out in practice. And he kept the matter flexible. Nothing was crystallized into binding precedent. He did not hesitate, for example, in staying away from the Senate, to abandon a policy which he had but shortly before regarded as "indispensably necessary." What applies in that instance applies in most of his other practices. He was at pains, in most cases, to send to the Senate nominations of those upon whom he proposed to confer full powers. But in commissioning Secretary of State Pickering to negotiate an explanatory article to the third article of the Jay treaty, in 1796, he did not send in a nomination in advance, nor did he send in for advice and consent the names

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The Supreme Court and the Constitution (New York, 1912), Chap. II; E. S. Corwin, *The Doctrine of Judicial Review, Its Legal and Historical Basis, and Other Essays* (Princeton, 1914), 10-17; C. Warren, *The Supreme Court in United States History* (Boston, 1922), I, 14-16.

of those to whom he proposed to entrust negotiations with the Barbary powers, though he had consulted with the Senate before undertaking the business at all.<sup>11</sup> His consultation with the Senate was based upon two considerations: upon the intention of the framers and upon grounds of prudence. As Jefferson said, "We were in the habit of consulting the Senate previously, when the occasion permitted, because their subsequent ratification would be necessary."<sup>12</sup> But before his administration was over, Washington even departed from that rule and began to assume a control that he had not at the outset intended to assert.

During subsequent administrations the President and the Secretary of State drifted further from the Senate. Reference to the advice and consent of the Senate before the appointment of a commissioner to negotiate a treaty became the exception rather than the rule,<sup>13</sup> and prior consultation with the Senate became equally exceptional. The Constitution did not specify at what stage in the making of a treaty the advice and consent of the Senate was to be secured, and it came to be the practice to ask it only after the negotiation had proceeded to such a point that a draft treaty was signed. The Senate could then consent, or advise changes through "amendments" or "reservations." This altera-

<sup>11</sup> For an Attorney General's opinion with reference to the appointment of negotiators for Indian treaties, see below, 125-126.

<sup>12</sup> Quoted, Hayden, *Senate and Treaties*, 47.

<sup>13</sup> This statement is based on a study of each treaty made from 1789 to 1837.

tion in procedure was assisted by the fact that one of the hopes of the framers was defeated; namely, that most treaties would be negotiated in this country. In contrast to this expectation and desire, during the course of thirty years the only agreement signed in this country was an article explanatory to Jay's treaty. All other treaties were negotiated abroad. This unexpected development made intimate cooperation with the Senate difficult.

In the course of time practice gradually hardened. But it is indubitable that but for circumstances, not of great importance individually, the custom of the Constitution in the matter of treaty-making might have been something quite different. It is only natural, therefore, that Senators have occasionally been eager to undo some of the precedents and recover for the Senate a larger participation in the negotiation of treaties.<sup>14</sup> This has produced struggles from time to time for an alteration in the balance of power between the Senate and the President. Certain principles, however, were early established and have never been changed. Among these the first is that the President is "the only channel of communication between this country and foreign nations."<sup>15</sup> Washington did, as

<sup>14</sup> See, for example, H. C. Lodge, "The Treaty-Making Powers of the Senate," *A Fighting Frigate and Other Essays and Addresses* (New York, 1902).

<sup>15</sup> Jefferson to Genet, Nov. 22, 1793, *American State Papers, Documents, Legislative and Executive, of the Congress of the United States* (Washington, 1832-1861), *Foreign Relations*, I, 184.

we have seen, send one letter from the French government to the Senate unopened. But when the Senate returned it to him to open, a precedent was set which has not been departed from. John Marshall summed up the situation when he said, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."<sup>16</sup>

This is true in both senses. Whatever is to be communicated to the United States must come through him, and "it is from him alone that foreign nations or their agents are to learn what is or has been the will of the nation; and whatever he communicates as such, they have a right, and are bound to consider as the expression of the nation."<sup>17</sup> Neither Congress nor the Senate, consequently, can communicate with foreign powers. The statute creating the Department of State made that principle the law of the land by committing to the supervision of the President the matter of "correspondence, commissions, or instructions, to or with public ministers or consuls, from the United States." Whatever the expectation may have been with regard to his procedure in preparing these in cooperation with the Senate, it was not made an explicit part of the law. His word was to be the official word, "and no foreign agent can be allowed to question it, to interpose between him and any other branch of Government, under the pretext of either's transgressing their functions."<sup>18</sup>

<sup>16</sup> In the House of Representatives, March 7, 1800, *Annals of Congress*, 6 Cong., 613; quoted, Crandall, *Treaties*, 93.

<sup>17</sup> Jefferson to Genet, Nov. 22, 1793, *loc. cit.*

<sup>18</sup> *Ibid.*

It is true that Congress as a whole, or either branch, may express an opinion by resolution or otherwise, and request the President to transmit it; or it may be published to the world through the press. But unless the President does officially transmit it, settled practice regards such an expression of opinion as a domestic matter, and the resolutions as domestic documents, which foreign governments may not make a basis for diplomatic discussions.

It follows, of necessity, that if no other branch of the government may communicate with foreign powers, and if no foreign state may communicate its views to any branch of the American government save to the executive, that the actual negotiation of treaties must be in the hands of the President. On this point, also, the law creating the Department of State is explicit for it gives to the secretary the duties "relative to . . . negotiations with public ministers from foreign states or princes," under the supervision of the President. There is no doubt that the sponsors of the law expected that the negotiator would be appointed with the advice and consent of the Senate, and that his instructions would be approved by that body. Most of the treaties up to the end of Madison's administration mentioned the fact that the Senate had approved the negotiator,<sup>19</sup> and the President at first worked in closest cooperation with the Senate. But the statute did not in terms

<sup>19</sup> The chief exceptions are treaties with the Barbary states which were in a different form, an explanatory article to the Jay treaty negotiated by Secretary of State Pickering in 1796, the treaty with Prussia of 1799, and a treaty of 1802 with Spain.

require that the President should either send the Senate the name of the negotiator or a draft of his instructions, and as custom and constitutional theory developed, both practices disappeared. In the long run, treaties came to be phrased in such a way as to show that the President was regarded as the negotiator. The regular style of the preamble of a treaty may be illustrated by the extradition treaty with Japan,<sup>20</sup> which after reciting that "the President of the United States of America, and his Majesty the Emperor of Japan" have judged it expedient to make such a treaty, names the negotiators as "the President of the United States of America, Richard B. Hubbard, their Envoy Extraordinary and Minister Plenipotentiary," etc. The treaty negotiated in Paris to end the Great War contained the following clause: "The Honourable Woodrow Wilson, President of the United States, acting in his own name and by his own proper authority."<sup>21</sup> The President being the negotiator, it follows as a matter of course that any person employed as his

<sup>20</sup> 1886.

<sup>21</sup> Contrast the preamble of the Jay treaty. "His Britannic Majesty and the United States of America, being desirous, . . . The President of the said United States, by and with the advice and consent of the Senate thereof, hath appointed for their Plenipotentiary, the Honorable John Jay, Chief Justice of the said United States, and their Envoy Extraordinary to His Majesty," etc. The treaty of Feb. 16, 1903, with Cuba was signed by the two presidents—and by no one else. W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and Other Powers, 1776-1909* (Washington, 1910), I, 358.



deputy in the matter is his agent. The President may make the treaty himself. Ordinarily, because of the pressure of other duties, he relies upon an agent to prepare a draft of a treaty for his approval. Being his agent, the choice is no concern of the Senate.

Reasons of public policy or political strategy may induce the President to consult the Senate about nominations, or, indeed, about the initiation of negotiations, but this does not affect the law of the matter,<sup>22</sup> and in the selection of his agent the President is untrammelled. Attorney General Caleb Cushing said that the "full power," in virtue of which the agent of the United States negotiates and signs a treaty, "may be given to a special minister, to the resident minister, to the minister resident at some other court, to a justice of the Supreme Court, to any one of the Heads of Departments, to a consul, to an officer in the Navy, to a simple citizen of the United States, or to a special agent, so called, not a commissioned officer of the United States, as in the case of Mr. Morris and of others selected at the mere discretion of the Presi-

<sup>22</sup> For contrast in practice before 1815 and after, see Crandall, *Treaties*, 75-76; see *ibid.*, 68-72, for correlative topic; A. O. Bacon, "Treaty-Making Power of the President and the Senate," *North American Review*, CLXXXII, 506. Also see Senator Morgan, *Cong. Record*, 50 Cong. 1 Sess., XIX, 7168; also *ibid.*, 4978-4981; and for statement of contrary point of view, Senator Chandler, *ibid.*, 6355-6356. The matter was elaborately discussed in President Cleveland's administration when the fisheries treaty was signed and the Senate foreign relations committee made a voluminous report on the subject.



dent.”<sup>23</sup> Indeed, he may confer this full power on a foreign citizen.

The President being the negotiator, and the signer of the treaty merely his agent, it follows that the President’s disapproval destroys the agent’s work, on the one hand, and his approval cures any defect which may have arisen from lack of powers. What the President accepts as his own is properly negotiated so far as the United States is concerned; what he rejects is destroyed.<sup>24</sup> Approaching the matter from the opposite angle, it has been true since the foundation of the government under the Constitution that no one save the President can, on his own authority, sign a treaty. Even the Secretary of State, to whom the ordinary conduct of our foreign relations is confided, must have a separate commission from the President before he may sign a treaty; and no ambassador or other diplomatic functionary is privileged to undertake a negotiation save under the authority of a separate commission.

Another principle in the conduct of American foreign relations, also established at the outset, was that the advice of the Senate should have no directive force.

<sup>23</sup> Opinions of the Attorneys General of the United States (Washington, 1852- —), VII, 212-213.

<sup>24</sup> An interesting example is the treaty of Guadalupe Hidalgo signed by Nicholas Trist in direct defiance of explicit orders, after his authority had been totally withdrawn. The President, in like manner, accepted with some modifications the agreement made with a Samoan chief by Commander Richard W. Meade in 1872, though the American naval officer had acted without authority. Serial 1691, 44 Cong. 1 Sess., H. Ex. Doc. 161, 5, 6.

The theory of the framers was that there should be a balance. The President could do nothing on great national questions of foreign relations without the advice and consent of the Senate. The Senate could not act,—not even in making peace, finally,—without the President. Neither, in other words, could dictate to the other. Initiative in the framing of policy was joint; it was not committed to either. But with the President in the rôle of spokesman, and in possession of the machinery of the government in its external relations, the Senate was at a disadvantage in the exercise of its share of the initiative, and its relation to the conduct of treaty negotiations tended more and more to be negative in character. When the President sought the advice of the Senate before beginning negotiations, its advice had a better opportunity of shaping policy; but when it came to be asked at the end of the negotiations, the rôle of the Senate naturally shrank. Even from the outset, however, it could not order or compel the President to initiate negotiations. It always was and still is free to request the President to institute negotiations, but so also is the House of Representatives. There is no proof that requests from the Senate have had more influence with him than suggestions from other sources.

When a draft treaty has been signed, the Senate cannot deal with it unless the President choose to send it to that body. Even after a treaty has been submitted to the Senate for advice and consent, the President may withdraw it from the consideration of that

body. And after the Senate has advised and consented to ratification, the President may decline to ratify. These practices are all based upon the necessity that both parties agree. Before the ratifications are exchanged and the faith of the United States is pledged, either party, the executive or the Senate, may change its mind.<sup>25</sup> Only by straining the meaning of the word "negotiation" may the Senate be said to participate in it. The Senate may affect it, but the pressure is from the outside. The "amendments" of the Senate are to be classed as advice to the President in his conduct of the negotiation.<sup>26</sup> He may disregard the advice and allow the treaty to fail. He may accept part and reject part, leaving the treaty to stand or fall as the Senate chooses. He may accept all and attempt to incorporate changes into the draft. In short, the Senate can only accept or reject a draft. Its acceptance gives the instrument no validity and does not bind the President in any way. Its rejection kills the treaty. To call such action "participation in negotiation" is to do violence to the usual meaning of the words.

In the management of ordinary diplomatic business, as distinct from treaty-making, the power of the President is much more sweeping. Congress cannot direct the President, nor can it forbid him to do a

<sup>25</sup> See, in this connection, W. W. Willoughby, *The Constitutional Law of the United States* (New York, 1910), I, 457-460; Crandall, *Treaties*, 73-74, 95.

<sup>26</sup> On the subject of amendments and reservations, see D. H. Miller, *Reservations to Treaties, their Effect, and the Procedure in Regard Thereto* (privately printed, 1919).

thing. It may affect his plans by refusing appropriations, but it cannot otherwise control him. The fundamental fact is, therefore, that "the transaction of business with foreign nations is executive altogether."<sup>27</sup> This opinion of Jefferson became the accepted doctrine and the President has been subjected to fewer limitations in this field than in any other branch of executive activity.

Congress has recognized the supremacy of the President in foreign relations in many ways. In establishing the Department of Foreign Affairs, for example, it made very simple provision. The Secretary of State is directed to "perform and execute such duties as shall, from time to time, be enjoined on or intrusted to him by the President of the United States, agreeable to the Constitution, relative to correspondences, commissions, or instructions, . . . or to such other matters respecting foreign affairs as the President of the United States shall assign to the said Department: And furthermore, that the said principal officer shall conduct the business of the said Department in such manner as the President of the United States shall, from

<sup>27</sup> Writings of Thomas Jefferson, ed. P. L. Ford (New York, 1892-1899), V, 161. The whole paragraph reads, "The transaction of business with foreign nations is executive altogether; it belongs, then, to the head of that department, except as to such portions of it as are specially submitted to the Senate. Exceptions are to be construed strictly." The rest of the opinion is pertinent and interesting, as is another opinion of Jefferson (*ibid.*, 415) prepared as a draft for a message of Washington to the Senate. Also see *ibid.*, 1, by the editor.

time to time, order or instruct.”<sup>28</sup> That is substantially all the statute provides.<sup>29</sup> Conformably to the spirit of that statute Congress does not “direct” the Secretary of State to transmit information, though heads of other departments not only make reports to Congress, but Congress in calling for data “directs” its transmission. Usually Congress does not even request the Secretary of State to send information; requests are directed to the President, and practically always they are qualified with the proviso, “if in his judgment not incompatible with the public interest.”<sup>30</sup>

The contingent fund, or as it is often called, the secret fund, illustrates the manner in which Congress has recognized the peculiar authority of the President in the field of foreign affairs. The only effective checks which Congress may exercise upon the conduct of foreign relations lie in the Senate’s authority to approve treaties and in Congress’ control of the purse. The contingent fund mitigates the power of Congress, through control of appropriations, to limit the freedom of action of the President. Almost from the foundation of the government under the Constitution there has been a fund which the President may account for “in manner following, that is to say: by causing the same to be accounted for, specifically, in all instances,

<sup>28</sup> Annals of Congress, 1 Cong., II, 2187; Statutes at Large, I, 28-29.

<sup>29</sup> Contrast the act establishing the Treasury Department. *Ibid.*, 65; and see Willoughby, *Constitutional Law*, II, 1156-1158.

<sup>30</sup> Senator Spooner, 1906, Cong. Record, 59 Cong. 1 Sess., XL, 1420.

wherein the expenditure thereof may, in his judgment, be made public; and by making a certificate . . . , or causing the Secretary of State to make a certificate . . . of the amount of such expenditures, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the . . . sums therein expressed to have been expended.”<sup>31</sup> This is a clear self-imposed limitation by Congress of its right to appropriate for specific objects and to scrutinize and investigate expenditures.

Sometimes it has been thought that the legislation providing a contingent fund added to the appointing power of the President. It is important, therefore, to emphasize that the contingent fund does not confer any power upon the President to appoint agents. If that were the case, the power of appointing agents would be limited to use of them in diplomatic business. But the fact is that the agents used in the conduct of our foreign relations constitute only a very small fraction of the whole number of executive agents. The power of appointment arises not from legislative enactment, but from the general grant of executive power by the Constitution. It has been held that any executive department may appoint an agent or commission to make investigations. “The power of appointment results from the obligation of the executive department to take care that the laws be faithfully exe-

<sup>31</sup> Act of Feb. 9, 1793, *Annals of Congress*, 2 Cong., 1412; *Stat. at Large*, I, 299; for act of July 1, 1790, see *Annals of Congress*, 1 Cong., II, 2292; *Stat. at Large*, I, 128.



cuted.”<sup>32</sup> The right flows from the President’s prerogative, the acts of the departments, operating as branches of the executive, being, in contemplation of law, the acts of the President.<sup>33</sup>

Thus at the time agents of the Department of State were going abroad during the Civil War, the Navy Department sent its agents also. J. M. Forbes and W. H. Aspinwall were sent to England with ten million dollars in bonds and told to use the proceeds “if possible to stop the outfit of Confederate cruisers and especially of the iron-clad rams.”<sup>34</sup> In 1838 Secretary of the Navy Mahlon Dickerson reported, “In the various duties of this department, it has been found necessary to appoint many agents. Many of the duties imposed by laws upon the heads of departments must be performed by agents or deputies, the right of appointing which is a necessary consequence of the obligation to perform the duty imposed. Such appointments are not considered as made without the authority of law.”<sup>35</sup> This point of view was in accord with an

<sup>32</sup> Atty. Gen. John Nelson, Sept. 21, 1843, *Opin. Atty. Gen.*, IV, 248. Another opinion, that of the Attorney General in the McCall case, is pertinent also. *Ibid.*, II, 320.

<sup>33</sup> *Jones v. U. S.*, 137 U. S. 217; *Opin. Atty. Gen.*, XI, 398-399; and see Willoughby, *Constitutional Law*, II, 1178.

<sup>34</sup> *Letters and Recollections of John Murray Forbes*, ed. S. F. Hughes (Boston, 1899), II, 5-65.

<sup>35</sup> Serial 307, 24 Cong. 2 Sess., H. Rpt. 194, 97. For other agents in the Navy Department, see the appendix to this report which has the report of John P. Van Ness and Amos Kendall who were “appointed, by authority of the President of the United States, commissioners to receive and report such testimony as may be offered touching certain charges,” etc.



opinion of the Attorney General in the case of McCall. In that instance the Secretary of the Navy was authorized by law to make contracts for the subsistence and clothing of the Navy. "It would seem to me to be a necessary consequence, if the supplies for these objects are required . . . in places where there is no permanent agent, that the Secretary of the Navy, who could only act representatively, must . . . have the power to appoint a special agent for that purpose."<sup>36</sup> The Treasury Department has had its agents also. One well-known name is that of Robert J. Walker. When Forbes and Aspinwall were despatched by the Navy Department, Walker was sent to England by the Treasury "to acquaint European capitalists with the actual circumstances and resources of our country."<sup>37</sup>

In much the same way the War Department has used executive agents, especially in negotiating with Indians. The opinion of an early Attorney General declared that the President could not appoint, without the advice of the Senate, a commissioner to make a treaty with Indians, for the purpose of extinguishing their title to lands within the United States. Men who conducted negotiations were required, by the statute regulating trade with the Indians, to be "employed under the authority of the United States." "The expression *under the authority of the United States*

<sup>36</sup> Opin. Atty. Gen., II, 321.

<sup>37</sup> Forbes, Letters and Recollections, II, 43. For other special agents in the Treasury Department, see Serial 307, H. Rpt. 194, 217, 219, 236, 245 ff.; Serial 1337, 40 Cong. 2 Sess., H. Ex. Doc. 144; Serial 1982, 46 Cong. 3 Sess., H. Rpt. 337.

cannot mean any other than the constitutional authority of the United States, which it is considered *cannot be bestowed on any person but by the President, with the advice of the Senate.*"<sup>38</sup> This opinion, however, was not effective; the President made many such appointments on his own authority, so many, indeed, that it came to be thought that "no appointment of a minister, who has ever been employed to negotiate for peace, or for anything else, with any Indian tribe, whether dwelling within or without our territory, has ever been laid before the Senate for their consent. They are all considered as agents of the President."<sup>39</sup> The list of agents in executive departments is not exhaustive,<sup>40</sup> but it is illustrative of the fact that the assignment of duties to the executive by the Constitution or by statute implies the power to use agents in their execution.

Thus the duty of managing foreign relations, being one of the functions of the executive, gives rise to such a right of appointment. Attorney General Cushing was very explicit on this point. After citing a number of negotiators of treaties appointed without

<sup>38</sup> Opinion of Charles Lee, Opin. Atty. Gen., I, 66.

<sup>39</sup> Cong. Debates, 19 Cong. 1 Sess., II, 608. The statement is not accurate so far as early practice was concerned; but after the first few years nomination to the Senate was abandoned. See *ibid.*, 21 Cong. 2 Sess., VII, 298; and see John Sherman in Senate, Dec. 12, 1870, Cong. Globe, 41 Cong. 3 Sess., 256.

<sup>40</sup> To make it exhaustive would be impossible. To make it even fairly representative would necessitate a study of other departments as careful as this study of the Department of State.

having been nominated to the Senate, he says, "In each instance, the successive Presidents acted, as did earlier Presidents *in consimili casu*, in virtue of their constitutional power 'to make treaties,' that is to negotiate and prepare them for the consideration of the Senate, just as in virtue of direct authority of the Constitution, and without the aid of any mere enabling statute he has the power to grant pardons for offenses against the United States." <sup>41</sup> Attorney General Griggs also recognized an "office or employment emanating from the general treaty-making power." <sup>42</sup>

This general authority to use agents, however, may be "checked," according to the theory of the framers of the Constitution, by the refusal of Congress to provide funds to pay executive agents. As a matter of fact Congress has intervened, through its financial control, to put a very serious check upon the practice. By an act of March 26, 1842, Congress prohibited any payments to agents or commissioners thereafter to be appointed except out of specific appropriations to be made by law. <sup>43</sup> After the passage of this act the Secretary of War thought it necessary to use an agent and appealed to the Attorney General. He replied that there was no recourse, that although the appointing power of the secretary was not derived from Congress, the legislative body could, nevertheless, "indirectly limit the exercise of this power by refusing appropria-

<sup>41</sup> Opin. Atty. Gen., VII, 206.

<sup>42</sup> Ibid., XXII, 186.

<sup>43</sup> Stat. at Large, V, 533.

tions to sustain it, and thus paralyze a function which it is not competent to destroy.”<sup>44</sup>

From these embarrassments and obstacles the contingent fund intervened to give the President a substantially free hand in the use of executive agents in diplomatic business. The contingent fund, therefore, while it does not confer power to use special agents, facilitates their use. It constitutes a recognition that the conduct of foreign relations is decidedly different from other executive duties, for the provision of the law making the contingent fund available, which states that expenditures need not be accounted for specifically, but may be “covered in” by the mere certificate of the President, is the only exception to a program of rigid accounting in the whole structure of the government.<sup>45</sup> It is a recognition that the financial check—the strongest instrument of Congress in controlling the executive—should not be employed in this field with a force comparable to its use in other ranges of activity. For this reason the act of March 26, 1842, limiting the employment of executive agents, made an exception in favor of such agencies paid from the contingent fund for the expenses of foreign intercourse.<sup>46</sup>

After refraining for nearly a century and a quarter

<sup>44</sup> *Opin. Atty. Gen.*, IV, 248. Other cases of statutory control may be seen in *ibid.*, V, 305-307; XVIII, 232-233; Revised Statutes, Sec. 4017; *Opin. Atty. Gen.*, XXIV, 78; XXV, 228; XV, index under special agents.

<sup>45</sup> Serial 485, 29 Cong. 1 Sess., H. Doc. 187, 3; also Cong. Record, 65 Cong. 2 Sess., LXV, 1728.

<sup>46</sup> *Stat. at Large*, I, 533; *Opin. Atty. Gen.*, IV, 248.

from any effort to control the appointing power of the President in matters of the executive conduct of foreign relations, a departure was made in 1913. When the general deficiency appropriation bill of that year had been passed by the House of Representatives, the Senate committee on appropriations offered an amendment to the effect that "hereafter the Executive shall not extend or accept any invitation to participate in any international congress, conference, or like event, without first having specific authority of law to do so." The amendment appeared on the floor March 1, in the midst of the legislative jam at the close of the third session of the sixty-second Congress, and during a parliamentary wrangle over the order of business before the Senate. It had not an instant of consideration, and was agreed to without a word of comment, either explanatory or critical.<sup>47</sup> When the bill was sent back to the House, only two amendments were mentioned; the important one referred to above was not spoken of, and in accepting the conference report no reference was made to it even by way of inquiry.<sup>48</sup> The bill was one of the last signed by President Taft,<sup>49</sup> at the Capitol, just before the inauguration of his successor. Such was the extraordinary manner in which an important legislative precedent was overthrown. After refraining for many years from legislative efforts to control the appointing power in matters of this

<sup>47</sup> Cong. Record, 62 Cong. 3 Sess., XLIX, 4411.

<sup>48</sup> March 4, 1913, *ibid.*, 4835-4836, 4847.

<sup>49</sup> *Ibid.*, 4855.

character, a new policy was adopted without a word of discussion upon the floor of either house. No satisfactory explanation of this action has ever been offered. Discussion has occasionally turned to the statute both in the Senate and in the House, but no one has been able to state authoritatively the real purpose of its framers or their fundamental motive.<sup>50</sup>

It is altogether likely that this enactment did not seem to Congress so revolutionary a move as it actually was. Congress had gained, in the course of the years, some powers of control over foreign relations which it had not had in the beginning. The field in which the legislative branch had made the greatest advance in power at the expense of the executive was in the matter of appointments. At the outset of the government the initiative of the President was complete. It was for him to determine where diplomatic representatives should be sent and what their grades should be.<sup>51</sup> Jefferson advised Washington that the Senate could not "negative the grade" of a diplomatic appointee.<sup>52</sup> A lump sum was even put at the disposal of the President from which he could determine the salaries of American diplomatic officers. It was held that diplo-

<sup>50</sup> Cong. Record, 63 Cong. 1 Sess., L, 1611-1612; *ibid.*, 67 Cong. 4 Sess., LXIV, 929, 990, 1058.

<sup>51</sup> Washington made clear his point of view in a message to the Senate, Feb. 18, 1791, with reference to sending a minister to Portugal. *Am. State Papers, For. Rel.*, I, 127-128. For a still earlier opinion of Jefferson on the matter, see *Jefferson, Writings*, V, 161.

<sup>52</sup> *Ibid.*, VII, 465.



matic officers were provided for by international law, that the Constitution simply recognized them as necessarily a part of the American government as well, and made provision for their appointment.<sup>53</sup> Consequently, there seemed, in the beginning, to be no need for statutes defining the duties of diplomatic officers, since their functions were determined by the law of nations. When the new government under the Constitution was established, Congress took no action and the executive department proceeded to organize a diplomatic and consular service in accord with its own interpretation of the rules of customary international law.

This condition of affairs did not long subsist and the President steadily lost power. Congress soon abandoned the practice of lump sum appropriations, and the use of specific appropriations gave to Congress a certain authority in the matter of appointments. In 1792 an act was passed defining the duties and functions of consuls.<sup>54</sup> In 1855 and 1856 Congress passed comprehensive legislation dealing with the diplomatic and consular service, defining the functions of the officers, stating where representatives were to be sent, and the grade which was to be employed. These statutes were not very destructive of presidential initiative because the Attorney General, Caleb Cushing, in a minute analysis of the law, decided that its provisions were

<sup>53</sup> Writings of James Madison, ed. G. Hunt (New York, 1900-1910), IX, 91-93; Opin. Atty. Gen., XXII, 186.

<sup>54</sup> C. L. Jones, *The Consular Service of the United States* (Philadelphia, 1906), 4.



not mandatory upon the President and could not overrule his judgment. Where the law said the President "shall," the Attorney General interpreted it to mean "may." Nor did he stop by saying it was permissive instead of mandatory; he went so far as to say that the President could perform the act without the aid of the permissive statute. His opinion was so sweeping that parts of the law were reduced to a mere expression of opinion on the part of Congress. Thus the President, he held, was not bound to send persons to all the places named, nor was he prohibited from sending representatives to places not named. He even went to the extent of saying that the President might send persons of different grades to places which were named in the law.<sup>55</sup>

In spite of the Attorney General's opinion, Congress persisted in that type of legislation and ultimately gained complete control. The law of 1893, which provided for the creation of the rank of ambassador and defined the circumstances under which an ambassador might be sent, originated in Congress and was not desired by the President or the Secretary of State.<sup>56</sup> When a legation is to be raised to the rank of an

<sup>55</sup> Opin. Atty. Gen., VII, 186 ff., 247 ff. On this power of the President alone to determine title and grade, see Jefferson's opinion, F. Wharton, *A Digest of the International Law of the United States* (Washington, 1886), I, 580; also message of Washington on the Humphreys mission to Portugal, *Writings of George Washington*, ed. J. Sparks (Boston, 1834-1837), XII, 92.

<sup>56</sup> Foster, *Practice of Diplomacy*, 20-26; Moore, *Digest*, IV, 737-739.

embassy, it now requires specific statutory approval to make the alteration, and the President no longer sends regular diplomatic officers to places unless provided for by legislation, nor does he send officers of a grade other than that authorized by Congress.<sup>57</sup> The important alteration in the balance of power brought about by such legislation illustrates one of the difficulties of most statements of constitutional law, from a historical point of view. Such statements tend to represent the law as in a condition of stable equilibrium. In reality it is in a state of flux, and statements of the respective powers, duties, and responsibilities of the several branches of the government need constantly to be revised.

However similar the law of March 4, 1913, respecting international conferences may have seemed to the laws just mentioned, there was an important difference. Statutes fixing the grade or rank of permanent diplomatic officials may be said to grow out of the power of Congress to originate and control appropriations, for the grade usually determines the salary,<sup>58</sup>

<sup>57</sup> See, for statement of principal acts in this connection, Wright, *Control of American Foreign Relations*, 325. There has been important legislation subsequent to its publication, including provision for an embassy at Havana (Public, No. 385, 67 Cong.), and an act for the reorganization and improvement of the foreign service of the United States—the Rogers bill (Public No. 135, 68 Cong.).

<sup>58</sup> This was not true of the act of March 1, 1893, which provided for the grade of ambassador, for the law specifically said, "This provision shall in no wise affect the duties, powers, or salary of such representative." Stat. at Large, XXVII, 497. It is inter-

and a regular appropriation becomes necessary thereby. But in the matter of international conferences, those considerations do not have the same force, for appointments to such gatherings are temporary in character. They may involve no cost, or the cost may properly be met from funds already at the disposal of the President or the Department of State. If Congress desired merely to preserve the independence of its appropriating power, the legislation should have been phrased in different terms. Congress could, with entire propriety, have prohibited the extending or the accepting of any invitation which would have involved the expenditure of funds not previously appropriated. A law requiring the President to secure an appropriation from Congress before entering upon a course of action that would entail expenditure beyond the amount of his "secret fund" would have involved no invasion of executive power.

The law of March 4, 1913, was not so limited. It made no reference to the appropriating power, but only to the legislative power. It should be borne in mind that the process of "authorization" is legislative in character, and is to be distinguished from the process of "appropriation." The rules of Congress recognize this distinction, so that the objection of a single member rules out legislative provisions from an appro-

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esting and pertinent to observe that this departure from a tradition as old as the government, like the one under discussion, was made without a word of comment, explanation, or criticism. Foster, *Practice of Diplomacy*, 23.

priation bill. An appropriation does not constitute an "authorization"; it merely facilitates the exercise of a power derived from the Constitution or from prior legislative authorization. In default of any verbal explanation of the purpose of the act, the intent must be inferred from subsequent authorizations under the act. Many of these contained the proviso "that no appropriation shall be granted at any time for expenses by delegates or any other expenses incurred in connection with said conference."<sup>59</sup> The intent of the law, as interpreted by legislative practice in these authorizations, is manifestly to secure legislative control of the executive management of foreign relations. In attempting thus to curtail the President's power, a new departure was made for which the statutes with reference to the foreign service offer no true analogy.

From another point of view it may have appeared to the framers of the law that no great or significant variation from established custom was involved. Upon a number of occasions in the past, Congress had requested the President to issue invitations to international congresses and conferences to be held in this country.<sup>60</sup> Occasionally the language was made to read "that the President be authorized and requested" or simply "authorized" to extend invitations.<sup>61</sup> The meaning of such resolutions is clear when viewed in

<sup>59</sup> See, for example, Stat. at Large, XXXVIII, 237, 768, 773, etc.

<sup>60</sup> Ibid., XXXVII, 642.

<sup>61</sup> Ibid., 636, 637, etc.

the light of legislative practice; they meant that if invitations to an "authorized" conference were accepted, and an appropriation became necessary to provide for its sessions, the money would be forthcoming.<sup>62</sup> Such resolutions were intended as advice or encouragement for the President. They did not compel him to call the conference. Neither did the absence of such a resolution prevent him from making plans for an international gathering. The President did not need to wait for such "authorization" before issuing invitations. In no case did the executive request "authority" to invite other nations.

So far as the acceptance of invitations from other nations to conferences to be held abroad was concerned, the President never requested "authority" to accept; nor did Congress volunteer to give it. The procedure was simply to ask, where necessary, an appropriation to pay the costs of American participation; and this Congress, in its discretion, could grant or withhold.<sup>63</sup> Congress did not always have a perfectly free hand, for sometimes the prior acceptance of the invitation had, in a sense, committed the whole government; and sometimes, but less frequently, the request did not come until participation was a fact. Approaching the matter from the point of view of executive practice or from that of congressional procedure, it is perfectly clear that these earlier legislative

<sup>62</sup> See, for authorization, Stat. at Large, XXXIV, 1422; and for appropriation, *ibid.*, XXXV, 680.

<sup>63</sup> See, for example, *ibid.*, XXXIV, 118.

"authorizations" involved no element of control over the executive beyond that arising from the normal exercise of the appropriating power.

The President, on one or two occasions, sought to free himself from even so much legislative control as arose from the necessity of seeking specific appropriations for each individual conference. President Arthur, in his second annual message of December 4, 1882, said, "In view of the frequent occurrence of conferences for the consideration of important matters of common interest to civilized nations, I respectfully suggest that the Executive be invested by Congress with discretionary powers to send delegates to such conventions, and that provision be made to defray the expenses incident thereto."<sup>64</sup> The phraseology of his request was unfortunate. Undoubtedly the President already had discretionary power to send delegates to such conferences; the only thing with which he needed to be invested was an annual appropriation to defray their expenses. The hoped-for lump sum appropriation was not forthcoming, and the request was renewed in his third annual message of December 4, 1883.<sup>65</sup>

Again no attention was paid to the recommendation, and the matter rested until President Harrison, in his second annual message of December 1, 1890, referred to Arthur's message and asked that "standing provision be made for accepting, whenever deemed advisable, the frequent invitations of foreign governments to

<sup>64</sup> Richardson, Messages and Papers, VIII, 127.

<sup>65</sup> *Ibid.*, 176.



share in conferences looking to the advancement of international reforms in regard to science, sanitation, commercial laws and procedure, and other matters affecting the intercourse and progress of modern communities."<sup>66</sup> This, in like fashion, brought no response, and Congress continued to make individual appropriations in each case where money was needed to allow the President to participate in such gatherings. Thus, while Congress showed no disposition to give the President greater freedom than he already enjoyed, neither did it show any disposition to restrict his judgment within its legitimate scope. The neglect of Congress to provide a lump sum appropriation furnishes no precedent for the statute under discussion. Many of the conferences for which the law of March 4, 1913, requires the President to ask authorization call for no appropriation at all.<sup>67</sup>

In that respect, as in others, the law of 1913 made a radical departure from earlier practice. The conclusion must be that the law of 1913 represented an attempt to control the judgment of the President on a matter committed to his especial care. In so far it appears to be unconstitutional. It has never been construed by an Attorney General and it has not come before any court. President Wilson did not even know

<sup>66</sup> Richardson, *Messages and Papers*, IX, 111. President McKinley made a similar recommendation in regard to international exhibitions, Dec. 5, 1898. *Ibid.*, X, 178.

<sup>67</sup> See, for concrete examples, since March 4, 1913, *Stat.* at Large, XXXVIII, 237, 768, 773, 774, 775, 778; XXXIX, 475, 1134, 1168; XLI, 271; XLII, 1321.



of its existence until he had been in office more than three years. As soon as his attention was drawn to it, he declared it to be an "utterly futile" statute, because it did not come within the recognized powers of Congress. It was not an act limiting the power of the Secretary of State, whose powers, being the creature of legislation, might be altered by act of Congress. It was levelled at the President himself, and sought to limit his discretion in the conduct of one type of negotiation,—that in international conferences, an increasingly common type.<sup>68</sup> If Congress may deny the President the right to negotiate in a conference, it may limit his power to negotiate through other channels. This has not been contemplated in our constitutional law.

Whatever may have been the expectation at the outset with regard to the participation of the Senate, it has long been agreed that the President is free to enter upon negotiations. Congress may partially cripple a power which it is not competent to destroy by refusing

<sup>68</sup> It is to be contrasted with laws giving directions or powers or limiting the authority of federal bureaus. A joint resolution approved Aug. 17, 1912, provided "that the several Federal bureaus doing hygienic and demographic work are hereby authorized to prepare and install exhibits at the exhibition to be held in connection with the Fifteenth International Congress on Hygiene and Demography . . . *Provided*, That such exhibits . . . can be prepared and installed without requiring any special appropriation for this purpose." Stat. at Large, XXXVII, 642. Such an authorization is proper when directed to a bureau, but to require the President to get such authorization to engage in a discussion,—for such is the work of a conference,—is an entirely different matter.

appropriations. But Congress has no power whatever to limit the President in his choice of negotiators. In contemplation of law, the President is the negotiator of all treaties. The actual discussion is usually committed by the President to an agent, but there are no limitations upon his choice of a representative. He may select a diplomatic or other official, a private citizen, or even a foreigner. That has long been the admitted theory and practice. Whether his agents, be they called commissioners or delegates or by some other title, shall receive compensation is the only question which must be decided by Congress, and then only in the absence of money available from contingent or other funds. Yet this statute seeks, in explicit terms, to prevent the President from appointing delegates to conferences, and makes no reference to the matter of appropriations at all.

In view of these considerations, it is not surprising that the law has not been uniformly interpreted or consistently observed. In many cases, it is true, attention has been paid to its terms. Shortly after the passage of the act, for example, authorization was secured before the President accepted an invitation from the government of the Netherlands to be represented at an international conference on education to be held at The Hague in 1913.<sup>69</sup> On that occasion the acting Secretary of State wrote the Secretary of the Interior <sup>70</sup> that by reason of the provision in the deficiency act ap-

<sup>69</sup> Stat. at Large, XXXVIII, 236-237.

<sup>70</sup> March 27, 1913.

proved March 4, 1913, this government is prohibited from accepting an invitation to participate in any international congress, conference, or like event, without first having specific authority of law to do so.<sup>71</sup> A joint resolution authorizing participation was drafted in the office of the commissioner of education. This was considered by committees of the House of Representatives and the Senate, and finally reported favorably and passed.<sup>72</sup>

<sup>71</sup> Cong. Record, 63 Cong. 1 Sess., L, 1466.

<sup>72</sup> Ibid., 1611-1612. In the course of debate on this matter, a statement was made which appears at first sight to explain the origin of the law under discussion. Mann, of Illinois, said, "Gentlemen will remember that at the last session the President of the United States, considering the matter so important, sent a message to Congress declaring that Congress ought not in any case to authorize him to accept an invitation to participate in these international conventions unless Congress intended to provide the necessary money to take care of the delegates." Ibid., 1465. But the language of the message does not bear out that interpretation. In a message asking an appropriation to meet part of the expenses of the fourth international congress on school hygiene, which the President had been "requested" to invite to meet in Buffalo, "provided, that no appropriation shall be granted at any time hereafter in connection with said Congress," President Taft, after explaining the circumstances which led to a request for an appropriation, despite the proviso, said, "Personally I am very much opposed to any invitation of this sort at the instance of the Government in which the Government does not assume all the expense of entertainment. Other countries much less able than the United States never extend an invitation of this sort without having proper preparation for the reception of the guests of the nation." Ibid., 62 Cong. 3 Sess., XLIX, 3592. There is nothing here about authorizing the President to do anything. For other legislative discussion of the law, see *ibid.*, 67 Cong. 4 Sess., LXIV, 929, 990; and for expression of doubt as to its binding power, *ibid.*, 1058.

It is exceedingly significant, however, that there is not a single case where the President secured from Congress authorization to accept an invitation to a conference of a political or diplomatic character, such, for example, as the fifth Pan-American conference, which met at Santiago, Chile, in 1923. This illustration is one of peculiar interest, moreover, because an appropriation was necessary.<sup>73</sup> The policy in respect to diplomatic conferences was of the greatest importance, because it released the President from leading strings in the matter of war diplomacy. There was no legislative authorization for him to attend the Paris peace conference, nor for American participation in the supreme economic council, the London conference, or any of the other numerous gatherings charged with the liquidation of the political and other problems of the Great War.

Not only has the executive acted in accepting invitations to participate in political conferences without congressional authorization, but it appears that since 1917 the whole practice of requesting Congress for authority to accept invitations to any sort of international conference has virtually fallen into disuse. The last specific statutory authorization of that character occurred with the approval, March 3, 1917, of a joint resolution for participation in the tenth international congress of the world's purity federation.<sup>74</sup> There appear to have been few requests for authority to

<sup>73</sup> Stat. at Large, XXXVIII, 450, 1126; XXXIX, 259, 1055.

<sup>74</sup> Ibid., XXXIX, 1134

accept invitations since that time.<sup>75</sup> Yet it is well known that the United States has participated in many conferences in the years since 1917. Moreover, Congress has in several instances appropriated money for participation, despite the fact that the provisions of the law had been neglected.<sup>76</sup>

In the matter of issuing invitations to conferences in this country, the provisions of the statute have been somewhat more carefully observed. There is one exception of the first magnitude. The so-called Borah resolution, approved July 12, 1921, "authorized and requested" the President "to invite the Governments of Great Britain and Japan to send representatives to a conference" for the purpose of reaching an agreement for the reduction of naval expenditures and building programs "during the next five years."<sup>77</sup> The executive took no notice of this in preparing for the Washington conference, either in sending invitations to foreign nations or in asking appropriations from Congress. The President acted as though the two had no connection whatever. Senator Borah himself said in the Senate, a year after the conference,

<sup>75</sup> The last request was contained in a message of President Harding, Jan. 10, 1923, asking specific authorization for the Department of Agriculture to be represented by a delegate to the international congress for cattle breeding which was scheduled to be held at The Hague in Aug., 1923. Cong. Record, 67 Cong. 4 Sess., LXIV, 1520, 1561; Serial 8171, 67 Cong. 4 Sess., Sen. Doc. 287.

<sup>76</sup> See, for example, Stat. at Large, XLII, 1548.

<sup>77</sup> Ibid., 141.

that "it has been stated time and time again authoritatively that he [the President] did not call the disarmament conference as a result of that resolution. It originated in another way, we are told, and it was not the disarmament conference for which the resolution provided. It included subject matters which the resolution did not cover. It included countries which the resolution did not cover, and it included subject matters which even disarmament did not cover."<sup>78</sup> The Washington conference, then, stands as an exception. It is very significant that the exception occurred in the case of a conference diplomatic and political in character. It indicates that the executive is more willing to make a stand for the independent exercise of power in matters of that character. The general custom of the executive is to ask authorization from Congress before issuing invitations for conferences to meet in this country. That practice has been followed even when no appropriation was required.<sup>79</sup>

Congress, on its part, has not hesitated to attach restrictions when it has given legislative approval to executive proposals for participation in international conferences. An important instance occurred in connection with the international communications conference. It was agreed during the negotiation of the treaty of peace at Paris that "the principal allied and associated powers shall as soon as possible arrange for

<sup>78</sup> Cong. Record, LXIV, 929.

<sup>79</sup> For example, see Stat. at Large, XXXVIII, 1222; XXXIX 475, 618, 894, 1168; XLI, 271, 279, 367.



the convoking of an international congress to consider all international aspects of communication by land telegraphs, cables, and wireless telegraphy, and to make recommendations to the powers concerned with a view to providing the entire world with adequate facilities of this nature on a fair and equitable basis." The conference was to meet in Washington. Secretary of State Lansing wrote President Wilson, September 4, 1919, calling his attention to the law of March 4, 1913, and suggesting that the matter "be laid before Congress for its decision as to whether it will authorize the extension of the formal invitation and will provide the appropriation of \$75,000, which it is thought will be required for United States representation in this international conference."<sup>80</sup>

The President thereupon, without referring to the opinion of this act which he had expressed with such vigor and promptness on first hearing of it, sent a message to Congress asking the authorization, mentioning the act of 1913 as the reason for his action.<sup>81</sup> The chairman of the committee on foreign relations, Senator Lodge, requested the Secretary of State to draft a bill.<sup>82</sup> As drafted in the Department of State, it provided that the President be "requested and authorized" to call the conference "and to appoint representatives to participate therein."<sup>83</sup> The inclusion of the last

<sup>80</sup> Cong. Record, 66 Cong. 2 Sess., LIX, 270.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid., LIX, 267.

<sup>83</sup> Ibid., 66 Cong. 1 Sess., LVIII, 7329.



clause proved to be an error in judgment. The President already had full power to make the appointments without any special authorization upon that point. The appearance of the phrase served only to draw attention to the fact that the appointments were to be made by the President alone. The committee on foreign affairs of the House of Representatives considered the clause, and the majority determined upon an amendment providing that the delegates should be appointed only "by and with the advice and consent of the Senate."<sup>84</sup>

The acting chairman communicated their purpose to the Secretary of State, who replied, "I would suggest that it is not customary to stipulate that delegates to the conference shall be appointed with the advice and consent of the Senate, and I think it would be wise to omit that stipulation."<sup>85</sup> A struggle over precedents ensued in the committee; but the majority persisted, and two reports, one for the majority and one for the minority, were laid before the House. In the partisan debate which followed, the majority admitted that precedents were against them,<sup>86</sup> that no such limitation had ever previously been put upon the President in any act like the one under discussion.<sup>87</sup> Majority spokesmen stated boldly and frankly that the amendment was designed to establish a new precedent.<sup>88</sup> It

<sup>84</sup> Cong. Record, 66 Cong. 1 Sess., LVIII, 7329.

<sup>85</sup> Ibid., LIX, 271.

<sup>86</sup> Ibid., LVIII, 7331, 7333, 7339, etc.

<sup>87</sup> Ibid., 7332, 7335, etc.

<sup>88</sup> Ibid., 7331, 7335.

was contended that by sending a message requesting authorization, the President had "recognized the authority of Congress to place this restriction on the calling of these conventions," and that having "the right to vote to grant or deny the President's request," Congress has "the right to put conditions on the granting of that request, whether it has ever been done before or not."<sup>89</sup> The provision was inserted in the bill,<sup>90</sup> and while it has not been uniformly made a part of subsequent enactments of the same character, it has appeared upon one or two occasions.<sup>91</sup>

Another instance of attaching restrictions to legislative authorization of conferences occurred in connection with the international labor conference. The treaty of Versailles provided that such a meeting should be held, and Washington was named as the place of meeting.<sup>92</sup> When the time came for issuing the invitations, the Senate was in the midst of its bitter debate over the proposal to approve the ratification of that treaty. There were, naturally enough, fears that the proposal for the international labor conference would get entangled in the general treaty discussion. Apparently in an effort to avoid that result,

<sup>89</sup> The Treaties of Peace, 1919-1923 (Carnegie Endowment for International Peace, New York, 1924), I, 251; Cong. Record, 66 Cong. 1 Sess., LVIII, 1331, 7335.

<sup>90</sup> Stat. at Large, XLI, 367-368; Cong. Record, LVIII, 7346, 7348; and for Senate action, *ibid.*, 66 Cong. 2 Sess., LIX, 267.

<sup>91</sup> See, for example, act creating World War foreign debt commission, Stat. at Large, XLII, 363.

<sup>92</sup> *Ibid.*, XLI, 279, 341-342; Cong. Record, LVIII, 3503.

the Secretary of Labor prepared a joint resolution authorizing the President to convene and make arrangements for the conference, "provided, however, that nothing herein shall be held to authorize the President to appoint any delegates to represent the United States of America at the said meeting of such conference, or to authorize the United States of America to participate therein unless and until the Senate shall have ratified the provisions of the said proposed treaty of peace with reference to such general International Labor Conference." <sup>93</sup> The proviso had the desired effect, and the authorization was voted without serious opposition.<sup>94</sup> But there was loss as well as gain. For the sake of expediency, a very damaging principle, so far as the executive conduct of foreign relations is concerned, was admitted. It was virtually conceded in this case that Congress has a right to attach conditions to a proposed line of action by the President within the sphere of his control of foreign relations.

In seeking to exercise control beyond its historic province, Congress tends to dictate the instructions which the American delegate is to bear, or to drive the President to unofficial diplomacy. Former Secretary of State Hughes, in an address before the New York State Republican Convention, April 15, 1924, referred to the danger that if Congress undertook to authorize representation in the League of Nations, "the Congress

<sup>93</sup> Cong. Record, LVIII, 3390, 3502.

<sup>94</sup> *Ibid.*, 66 Cong. 1 Sess., LVIII, 3504, 3584, 3921.

itself most probably would reserve the authority to give instructions." In appropriating money, May 15, 1924, for representation in an opium conference, Congress stipulated that "the representatives of the United States shall sign no agreement which does not fulfill the conditions necessary for the suppression of the habit-forming drug traffic."<sup>95</sup> Certainly there is no logical stopping place between giving the President authority to act only upon conditions which affect the content or tenor of his instructions, and making the main points of the instructions part of the authorization.

The act of March 4, 1913, has brought confusion into the practice of the government. It has never achieved its apparent aim, yet it has not been overthrown. Neither branch of the government has pursued a consistent course with reference to it. While the President regarded it, as has been said, "utterly futile," he proceeded to say he would not disregard it entirely, but would use his judgment in deciding what the circumstances of each occasion required. In the exercise of that judgment he acted variously. He directed members of the administration to seek legislative authorization, and on several occasions he signed

<sup>95</sup> Stat. at Large, XLIII, 119-120, 692; Cong. Record, 68 Cong. 1 Sess., LXV, 57-67, 7822, 8081. It is significant to observe that one of the reasons publicly stated for the retirement of the American delegation from the opium conference was that an agreement could not be reached which would accord with the limitation set by Congress in this act. See letter of Stephen G. Porter announcing withdrawal of American delegation, *Am. Jour. Int. Law*, XIX, 380-381.

messages to Congress which appeared to recognize the act as a bar to his independence of action; yet there are enough cases where the President has acted independently to make it clear that when sufficiently determined he can override the provisions of the law, if funds are available to meet the expenses.

It is difficult, from a study of the cases, to make a categorical declaration as to factors which influenced his judgment in the several cases. Apparently the most important was whether it would make an unpleasant issue with Congress. Where the conference was to be manifestly diplomatic and political in character, the executive has acted with considerable boldness. When Congress has discussed such cases, the more able constitutional lawyers in the Senate have admitted that the act of 1913 probably went beyond the power of Congress. With regard to conferences of less important character, there appears to have been a desire on the part of the executive to avoid making an issue of it. This would partly explain the difference in practice with reference to the issuance and the acceptance of invitations. Both are equally covered in the act. But of the two, invitations can more frequently be accepted without attracting undue attention and without the necessity of securing appropriations. Often, too, the United States can be represented abroad by an unofficial observer, who serves to express the point of view of the American government and to report proceedings, thus avoiding, in the case of conferences where question might otherwise be raised, any neces-

sity for congressional authorization. Issuance of invitations, on the other hand, is a more public act, almost inevitably involves a larger appropriation, and would challenge Congress more openly.

If the executive has not been perfectly consistent, Congress has been no more so. While upon some occasions it has given only conditional consent, upon others it has failed to protest when the law was disregarded. It has made special appropriations for attendance upon conferences despite the fact that the President had not been authorized to accept the invitation.<sup>96</sup> On some occasions, too, Congress appears to have recognized the initiative of the President by "requesting" him to act, instead of "authorizing" him to do so.<sup>97</sup> In so far as this statute was intended as a statement of a policy of Congress not to make appropriations for conferences unless apprised of the need in time to grant or refuse without embarrassment, it is sound; in so far as it attempts to control executive action further, it represents a trespass upon the powers of a coordinate branch of the government. Without it there was already ample provision for preventing the President from entering upon binding commitments at conferences. If any formal instrument were signed it would have to go before the Senate for approval before the President could ratify it. If informal engagements

<sup>96</sup> Stat. at Large, XXXVIII, 450, 1126; XXXIX, 259, 260; XLII, 609, 1548. For legislative doubts as to its binding power, see Cong. Record, 67 Cong. 4 Sess., LXIV, 1058.

<sup>97</sup> See, for example, Stat. at Large, XLII, 822.

were entered upon, there would be need, not infrequently, for legislation to carry into effect contemplated action, and Congress was free, in such cases, to exercise its discretion.

Another limitation upon the President's freedom in the matter of appointments was imposed when the Senate consented to the ratification of the treaties with Germany, Austria, and Hungary, October 18, 1921. In the resolution of advice and consent the Senate included a reservation "that the United States shall not be represented or participate in any body, agency, or commission, nor shall any person represent the United States as a member of any body, agency, or commission in which the United States is authorized to participate by this Treaty, unless and until an Act of the Congress of the United States shall provide for such representation or participation."<sup>98</sup> The reservation was the work of the majority of the Senate committee on foreign relations.<sup>99</sup> The chairman of the committee, in presenting the resolution, stated the reason for the action. "Where the United States has to take a step of such importance as this, is called upon to decide whether it shall participate in the proceedings of the Reparation Commission, for example, . . . the United States should mean the whole Government of the United States [in its legislative and executive branches] and not simply the Executive."<sup>100</sup> He thought it

<sup>98</sup> Stat. at Large, XLII, 1945, 1949, 1954.

<sup>99</sup> Cong. Record, 67 Cong. 1 Sess., LXI, 5769.

<sup>100</sup> Ibid., 5772.



"undesirable that a person without the official character should be sent to take part or even merely as an observer to take part in a transaction of such importance," though he recognized that "there is no language which we can frame or no law which we may pass which can prevent the President from sending a personal agent where he desires to send one."<sup>101</sup>

President Harding rather complained of the limitation imposed upon him by this reservation, as well as of the restrictions put upon him in connection with the World War foreign debt commission. Writing to Senator Lodge, December 27, 1922, he said, "In ratifying the treaty of peace with Germany the Senate made a reservation that the United States should not be represented on the Reparations Commission without consent of Congress, and no such consent has been given. Moreover, in creating the World-War Debt Funding Commission that body was restricted to explicit terms for rates of interest and ultimate time of payment. If Congress really means to facilitate the task of the Government in dealing with the European situation, the first practical step would be to free the hands of the commission so that helpful negotiations may be undertaken."<sup>102</sup> But the President did not disregard the reservation as the law of March 4, 1913, has been disregarded. Instead he continued to resort

<sup>101</sup> *Ibid.*, 5772, 5773.

<sup>102</sup> *Ibid.*, 67 Cong. 4 Sess., LXIV, 982; for statements that President Harding and Secretary of State Hughes desired authority to participate fully in the reparation commission, see *ibid.*, 67 Cong. 1 Sess., LXI, 6059; *ibid.*, LXIV, 1471.

to unofficial observers. This practice was vigorously criticized; it was called an evasion of the law, and proposals for legislative action to compel the recall of presidential representatives on the various commissions, such as the reparation commission, were actively discussed.<sup>103</sup>

Senatorial opposition to participation in these commissions was not new. President Wilson had written to Senator Lodge, as chairman of the committee on foreign relations, July 18, 1919: "There are some things in connection with the execution of the treaty of peace which can hardly await the action of the several Governments which must act with regard to the ratification of the treaty, and the chief of these is the functioning of the Reparation Commission. It is of so much importance to the business interests of the United States, as well as to the nations with which we are associated, that the United States should be represented on that commission, and represented now while the work of the commission is taking shape, that I am taking the liberty of writing to ask if you will not be kind enough to consult the Committee on Foreign Relations with regard to this particular appointment, and say to them that I would very much appreciate their approval of my appointing provisionally a representative of the United States to act upon the Reparation Commission." The "judgment of the committee" was "that until the proposed treaty is ratified in accord-

<sup>103</sup> Cong. Record, LXIV, 931, 932, 1055, 1056, 1471; *New York Times*, Jan. 11, 21, 1923.

ance with its terms no power exists to execute any of its provisions, either provisionally or otherwise.”<sup>104</sup> The upshot was that President Wilson participated in the work of the committee on organization of the reparation commission, and in the work of the commission when formally organized, through an executive agent as an observer.<sup>105</sup>

The reservation attached to the treaties with Germany, Austria, and Hungary appears to be as much an invasion of executive authority as the law of March 4, 1913. Commissioners to carry out the terms of treaties have not been regarded as officers known to the Constitution. Their duties have been held to be “an office or employment emanating from the general treaty making power,” and created by it and the several parties to the treaty.<sup>106</sup> A treaty having been ratified, the employment comes into existence, and it requires no creative act on the part of Congress to bring it to life and no authorization from the legislature for the President to carry the terms of the treaty into effect.<sup>107</sup> Treaties being, according to the Consti-

<sup>104</sup> Cong. Record, 67 Cong. 4 Sess., LXIV, 2460.

<sup>105</sup> Hughes to Lodge, Jan. 16, 1923, *ibid.*, 2460-2461.

<sup>106</sup> Opin. Atty. Gen., XXII, 186; see whole opinion, *ibid.*, 184-189.

<sup>107</sup> The practice had been for the President to appoint commissioners without either authorizing statute or nomination to the Senate, and this without reference to the duration of the commission, the point which was under discussion in this instance. The international fisheries commission provided by the treaty of April 11, 1908, between the United States and Great Britain, was “to continue in existence so long as this Convention shall

tution, part of "the supreme law of the land,"<sup>108</sup> the execution of treaties falls within the constitutional mandate to the President to "take care that the laws be faithfully executed." When there is an option as to the method of enforcement or execution, it naturally rests with the executive to make the choice.

It may be necessary to secure an appropriation, in which case the legislature plays a part, but unless there is need for an appropriation, Congress has no part. In the case of the reparation commission presumably no appropriation would have been necessary, as the costs were to be paid by Germany. Even in the case of the American observer, the cost of the staff, as well as the expense of its quarters, was paid by the reparation commission from German funds, although the observer and the assistant observer were paid from the emergency fund of the Department of State.<sup>109</sup> It is true that the treaties in question were unusual in that a choice was reserved whether or not the United States should participate in the commissions established by

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be in force, and each Government shall have the power to fill, and shall fill from time to time, any vacancy which may occur in its representation on the Commission." Art. V. Yet the President made the appointment without nomination to the Senate. The same precedent was followed in the case of the appointment of a commissioner under the boundary treaty of April 11, 1908, between the United States and Great Britain. See, for opinions that commissioners under treaties are not officers, *Opin. Atty. Gen.*, XXII, 184; XXIV, 12.

<sup>108</sup> Art. VI, Sec. 2.

<sup>109</sup> Hughes to Lodge, Jan. 25, 1923, *Cong. Record*, 67 Cong. 4 Sess., LXIV, 2463.

the treaty.<sup>110</sup> But there is no question that it would have been the normal and expected procedure for the executive to exercise the option and make the election. Indeed, the only purpose of the reservation of the Senate was to upset that expectation and deprive the executive of one of the powers normally his.

## II. *The Question of Office*

The right of the President to employ agents, without specific warrant of law, and without previous consent of the Senate, has seldom been absolutely denied, though often misunderstood. The problem has been to decide when a man ceases to be an agent of the President and when he becomes an official of the United States. It is clear enough that Gouverneur Morris, when he went to England in 1789, was an executive agent, not an officer. Washington called him a "private agent"; his only credential was a letter from Washington which requested him to serve and instructed him what to do, and which gave him no authority to do anything save make inquiries and report.<sup>111</sup> When, however, a man is sent to a place where the United States has a regularly appointed minister and is given authority paramount over the

<sup>110</sup> "That, while the United States is privileged to participate in the Reparation Commission, according to the terms of Part VIII of that Treaty, and in any other commission established thereto, the United States is not bound to participate in any such commission unless it shall elect to do so." Stat. at Large, XLII, 1943, 1948, 1953.

<sup>111</sup> Am. State Papers, For. Rel., I, 124.

regular minister, as was James H. Blount when he went to Hawaii in 1893, the unofficial status is not so clear.

It becomes necessary, therefore, to establish the criteria of office and test these appointees by the standards adopted. Madison went so far as to assert that no diplomatic functionaries are officers in the constitutional sense, because, speaking of the position of foreign ministers or consuls, "1. It is not created by the Constitution. 2. It is not created by the law authorized by the Constitution. 3. It cannot, as an office, be created by the mere appointment for it, made by the President and Senate, who are to fill, not create offices. . . . The place of a foreign Minister or Consul is to be viewed, as created by the Law of Nations: to which the United States, as an Independent nation, is a party; and as always open for the proper functionaries, when sent by the constituted authority of one nation, and received by that of another. The Constitution in providing for the appointment of such functionaries, presupposes this mode of intercourse as a branch of the Law of Nations."<sup>112</sup> At another time Madison wrote Monroe, "One question is, whether a Public Minister be an officer in the strict constitutional sense. If he is, the appointment of him must be authorized by *law*, not by the President and Senate. . . . According to my recollection this subject was on some occasion carefully searched into, and it was found that the practice of the Government had from the beginning been regulated

<sup>112</sup> Madison, Writings, IX, 91, n. 1.

by the idea that the places or offices of Public Ministers and Consuls existed under the law and usages of Nations, and were always open to receive appointments as they might be made by competent authorities." <sup>113</sup> With this view Monroe agreed. <sup>114</sup>

This dictum of Madison states a very important truth, <sup>115</sup> but it goes too far. His contention that diplomatic officers differ from other officers in not holding offices created by statute is entirely sound; but it is not true that diplomatic officials are not officers in the strict constitutional sense. Article II, Section 2, of the Constitution calls them officers, and differentiates them from others which are to be established by law, by

<sup>113</sup> *Ibid.*, IX, 91-93.

<sup>114</sup> "Your view . . . is in strict accord with my own, and is, as I understand, supported by numerous precedents, under successive administrations. A foreign mission is not an office, in the sense of the Constitution, which authorizes the President to fill vacancies in the recess of the Senate. It is not an office created by law, nor subject to the rules applicable to such offices. It exists only when an appointment is made, and terminates when it ceases, whether by the recall, death or resignation of the minister. It exists in the contemplation of the Constitution, with every power, and may be filled with any, or terminated with either, as circumstances may require, according to the judgment of the Executive." *Writings of James Monroe*, ed. S. M. Hamilton (New York, 1898-1903), VI, 285. This has the essential idea, but the thought is confused and contradictory. Monroe first says the office terminates when vacant, and then says, in effect, that the office exists even when vacant.

<sup>115</sup> The offices of "ambassadors, other public ministers, and consuls," . . . were adopted from the law of nations and exist independently of statute or treaty." *Opin. Atty. Gen.*, XXII, 186; see *ibid.*, VII, there cited.



naming them specifically as within the power of the President to appoint, subject to senatorial consent. The true point of view, therefore, is that diplomatic functionaries occupy a dual position—one in relation to international law, the other in relation to constitutional law. Mere official position gives an officer of the United States no privileges in foreign countries; mere diplomatic privilege abroad confers no official status in the United States. In each field there is a well-defined series of tests to determine official character, and a man may meet one series without conforming to the other. Thus a man might conceivably be a diplomatic functionary of the highest grade but not an officer of the United States, just as a man may be an officer of the highest grade but have no international status at all.

Attorney General Cushing spoke of this dual position in an opinion in which, after dealing with the various ranks, grades, and titles of diplomatic officers, and with the clause of the Constitution which mentions them, he says, "Thus it is perceived that the Constitution, specifying 'ambassadors' only, as examples of a class, empowers the President to appoint these and other 'public ministers,' without making the appointment of them subject, like, 'other (non-enumerated) officers,' to the exigency of an authorizing act of Congress." He cited appointments to definite grades, made in advance of any congressional legislation on the matter, as illustrating the fact that "the designation of the officer was

derived from the Law of Nations, and the authority to appoint from the Constitution.”<sup>116</sup>

The President has, as has been seen,<sup>117</sup> the constitutional power to appoint agents to assist him in the conduct of foreign relations. They may not be officers of the United States, but at the same time they may have high diplomatic duties and privileges. A man may be employed for diplomatic work, yet not be a diplomatic officer, for following the words of Chief Justice John Marshall, “although an office is an employment, it does not follow that every employment is an office.”<sup>118</sup> Occasionally a passage in an opinion of Attorney General Cushing is cited to prove the incorrectness of the statement just made. He said, “The expression ‘ambassadors and other public ministers’ in the Constitution must be understood as comprehending all officers having diplomatic functions, whatever their title or designation.”<sup>119</sup> This is usually quoted to prove that “all persons having diplomatic functions are officers.”<sup>120</sup> But that is not what Cushing said. He was pointing out that “ambassadors and public ministers” was a generic term which could include officers of whatever title, just as the “Revised Statutes”<sup>121</sup> say, “‘Diplomatic Officers’ shall be deemed to include

<sup>116</sup> Opin. Atty. Gen., VII, 192-194.

<sup>117</sup> Above, 117, 123-124, 126.

<sup>118</sup> U. S. v. Maurice, 2 Brock. 96.

<sup>119</sup> Opin. Atty. Gen., VII, 186.

<sup>120</sup> See, for example, quotation from Corwin, above, 108-109.

<sup>121</sup> Sec. 1674, Par. 5.

ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, *chargés d'affaires*, agents, and secretaries of legation, and none others." But Cushing did not say that all agents are officers; he was not contending that the exercise of certain functions or powers made an individual an officer, without regard to any other criterion. Neither does the statute say that all agents, or even all ambassadors, are diplomatic officers of the United States.

The point of view just set forth leads to the inquiry whether the nature or the importance of the duties committed to an individual determines his official status, or whether the character or significance of his task is immaterial. It goes without saying that duties are incident to office. Is it true that duties create office? It has been a favorite contention in Congress that duties do create office. This is noticed more in detail elsewhere; it is sufficient for the present purpose to cite, by way of illustration, the opinion of Senator Hoar, of Massachusetts, because his opinion was without partisan bias in this matter. He was dealing with the appointment of Senators and Representatives to diplomatic duties "of the gravest importance." He said, "The suggestion that these gentlemen are not officers seems to me the merest cavil. They exercise an authority, and are clothed with a dignity equal to that of the highest and most important diplomatic officers, and far superior to that of most of the civil officers of the country. To say that the President cannot appoint a Senator or Representative postmaster

in a country village . . . and then permit the President to send him abroad; to enable him to maintain the distinction and enjoy the pleasure of a season at a foreign capital as the representative of the United States, with all his expenses paid, and a large compensation added, determined solely by Executive will; and to hold that the framers of the Constitution would for a moment have tolerated that, seems to me utterly preposterous.”<sup>122</sup>

There is no question but that many special agents, because of the duties assigned them, have considered themselves officers of the United States. An interesting example is that of Charles Rhind, who negotiated the first treaty between the United States and Turkey. At the conclusion of the business he was presented with four horses. Rhind said, “This was evidently not intended as a present to me in my official capacity, since the ministers were aware that I could not accept them as such,” and he turned over his interest to the United States.<sup>123</sup> There was no reason whatever, if Rhind was not an officer, why he should not keep the horses; but when, Congress having failed to act, he made an attempt to claim them, President Jackson vigorously denied his claim.<sup>124</sup> In doing so Jackson revealed the fact that his opinion coincided with that

<sup>122</sup> G. F. Hoar, *Autobiography of Seventy Years* (New York 1903), II, 50; see whole passage, *ibid.*, 47-51.

<sup>123</sup> Rhind to Jackson, Dec. 10, 1830, *Cong. Debates*, 21 Cong. 2 Sess., VII, 782.

<sup>124</sup> Moore, *Digest*, IV, 581.

of Rhind with regard to the official status of the negotiator of the Turkish treaty.<sup>125</sup> Jackson was by no means the only President who regarded the signer of a treaty on the part of the United States as an officer of the United States. President Grant took the same point of view. General O. E. Babcock told Senator Sumner that he had not been empowered to sign the treaty for the annexation of the Dominican Republic because "an act of Congress forbids officers of the Army and Navy accepting any diplomatic appointments."<sup>126</sup> Secretary of State Fish wrote to the Dominican foreign secretary that "although the laws of the United States have prevented the President from giving an official position to General Babcock, it is hoped that your excellency will confer freely with him in these negotiations."<sup>127</sup> There was general agreement among Grant, Fish, and Babcock that to

<sup>125</sup> It is true that at the time of the gift Rhind held the office of consul, but it was not that office which Rhind or Jackson regarded as a bar to the gift. See, on this point, an opinion prepared in the absence of the Attorney General by James A. Hamilton, U. S. District Attorney at New York, J. A. Hamilton, *Reminiscences of James A. Hamilton* (New York, 1869), 208-211.

<sup>126</sup> Babcock to Chandler, June 8, 1870, *Cong. Globe*, 41 Cong. 3 Sess., 242. The act referred to is a statute of March 30, 1868, *Revised Statutes*, Sec. 1223. "Any officer of the Army who accepts or holds any appointment in the diplomatic or consular service of the Government shall be considered as having resigned his place in the Army and it shall be filled as a vacancy." There is a similar provision relating to officers of the Navy. *Ibid.*, Sec. 1440.

<sup>127</sup> Serial 1409, 41 Cong. 2 Sess., Sen. Rpt. 234, 193.

sign a treaty, Babcock would have to be a diplomatic officer of the United States.

The history of opinion in the matter of office is taken up in detail elsewhere. The illustrations just used, however, suffice to indicate that there is a common notion that the character of duties determine official status. This opinion is none the less incorrect. This specific point has been before the courts. In the *Matter of Hathaway*,<sup>128</sup> the court was dealing with the question whether a man acting as surrogate in a particular case, in which the regular officer could not act, was an officer or not. There was no doubt that the powers, duties, and authority of the temporary appointee were as full and complete, so far as the immediate case was concerned, as those of the regular official. Yet the court held that this was no office, for "the term 'public office' as used in the Constitution has respect to a permanent public trust or employment, to be exercised generally and in all proper cases. It does not include the appointment, to meet special exigencies, of an individual to perform transient, occasional or incidental duties such as are ordinarily performed by public officers." In *McArthur v. Nelson*,<sup>129</sup> the court decided that commissioners who were to have a court house constructed, and who, to that end, had authority to issue bonds and to levy an annual tax to meet the payment upon the bonds, were not officers, and this because, though their duties were important and their

<sup>128</sup> 71 N. Y., 238.

<sup>129</sup> 81 Ky., 67.

powers wide, they were special and temporary. It is clear that office does not depend upon the character of the duties.<sup>130</sup>

A second standard frequently referred to is the nature of the commission borne by the special agent. Commissions have been in many sorts of forms. Gouverneur Morris was directed to discuss questions with the British ministers on the authority of a letter of instruction from President Washington, which would have come from the Secretary of State but for the fact that the office was vacant.<sup>131</sup> Other agents have been sent with simply special passports. Such a one was issued to Luther Bradish, who was sent to Turkey in 1820.<sup>132</sup> Still others have borne a "certificate of appointment" from the Secretary of State. The agents sent to the island of Santo Domingo about 1820, in order to make demands for payment of claims, had this sort of commission.<sup>133</sup> Special agents have also borne the most formal commissions under the sign manual of the President and Secretary of State, and under the great seal of the United States.<sup>134</sup>

<sup>130</sup> See F. J. Goodnow, *The Principles of the Administrative Law of the United States* (New York, 1905), 224.

<sup>131</sup> *Am. State Papers, For. Rel.*, I, 124.

<sup>132</sup> Serial 221, 22 Cong. 1 Sess., H. Doc. 250, 3.

<sup>133</sup> Serial 420, 27 Cong. 3 Sess., H. Doc. 36, 114.

<sup>134</sup> All the special agents who have been authorized to sign treaties belong in this category. See, e. g., Cong. Record, 50 Cong. 1 Sess., XIX, 7633, for that of Bayard, Putnam, and Angell for the fisheries treaty; and Cong. Globe, 41 Cong. 3 Sess., 1213, for that of Nicholas P. Trist for the treaty of Guadalupe Hidalgo.



Occasionally an effort is made to differentiate between these,—calling those who carry no formal commission agents, and those whose authority is manifested by the broad seal and the President's signature officers—hence illegally appointed. Senator Tazewell, of Virginia, for example, in a debate growing out of the Turkish treaty of 1830, ridiculed the contention that the commissioners who signed that instrument were not officers. "A secret agent created by letters patent under the great seal, given to him to be shown, and addressed to all whom it may concern. This, sir, would far surpass the sarcastic irony of the author of the 'Critic.' These commissioners were officers of the United States—commissioned as such—authorized by that commission to pledge our faith and honor—entitled, as the bearers of our great seal, to be regarded everywhere as the representatives of the sovereignty whose emblem it is; and to claim all the immunities accorded by the public law to such representatives of any power on earth," while agents "never had any commission—had no authority to pledge your faith—were never trusted with your great seal."<sup>135</sup>

Undoubtedly the possession of a commission led some agents to "swell upon their agency," as John Quincy Adams remarked caustically of one of the men sent to South America. They regarded themselves as officers of the United States. Nicholas Trist appears to have done this.<sup>136</sup> Some Secretaries of State have

<sup>135</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 233.

<sup>136</sup> Cong. Globe, 41 Cong. 3 Sess., 1213.

regarded the possession of a commission as a test of office. Secretary of State Pickering expressed "a doubt of the power of the Executive to give a *formal commission*, though the necessity of the case warranted an informal appointment, with all the authority which could have been conferred by a commission."<sup>137</sup> It was not a question of power, for Pickering had assured Samuel Bayard, an agent sent to England in the matter of claims, that "there can be no doubt that every act of yours pursuant to your powers from the Government, must bind the latter and its citizens."<sup>138</sup> The "informality," the unofficial character, arose from the lack of a commission. In a passage quoted below,<sup>139</sup> Secretary Everett mentioned the fact that an agent for commerce and seamen did not "bear a commission from the Government" in such a way as to make it evident that he regarded possession of a commission a test of office.<sup>140</sup>

In point of fact, however, this criterion of office is false. A commission may be merely a certificate of authority rather than of office. If a private person is

<sup>137</sup> Pickering to Bayard, July 27, 1796, Manuscript Instructions to United States Ministers, III, 208.

<sup>138</sup> Id. to id., Sept. 15, 1795, *ibid.*, 47.

<sup>139</sup> Below, 178.

<sup>140</sup> An interesting case is the commission to Secretary Lansing as commissioner to negotiate peace with Germany, reproduced in his book, *The Peace Negotiations* (Boston, 1921), wherein the duties of the commissioner were called an "office." This probably was simply a casual error, and is not likely to have represented a matured opinion.

assigned duties abroad, he must carry evidences of his authority. These credentials will vary in accordance with the nature and importance of the task to which he is assigned. If the mission be one of inquiry and investigation merely, in which he is not required to deal with the national officers of the foreign state, he is likely to have simply a special passport. If his conversations with foreign officials are informal and unofficial, he may have as informal a letter as that of Gouverneur Morris, already referred to, or that which Thurlow Weed carried when he went to England for Seward.<sup>141</sup> When the agent is to deal with a viceregal government, or with the representatives of the minister of foreign affairs of the foreign nation, a certificate of the Department of State suffices. But if the American representative is to approach the foreign sovereign directly, or if he is to negotiate with representatives of that sovereign, for example in signing a treaty, his full powers will be signed by the President and the seal of the United States must be employed.

Misapprehension on this point has grown from an effort to revise a sentence by reading it backwards. It is true that all officers must have commissions; it is not true that all who have commissions must be officers. While it is unquestioned that credentials vary in character in accordance with the nature of the task, there is no place where a line may be drawn; it cannot be said, "Those with a commission under the Presi-

<sup>141</sup> T. Weed, *Life of Thurlow Weed* (Boston, 1883-1884), 638-639.

dent's hand are officers, those otherwise commissioned are not." This would, in the last analysis, be operating on the premise just shown to be false; namely, that official character depends upon the duties to be performed. The commission does, indeed, fix the status of the agent as a diplomatic functionary, but it has no necessary relation to his being an officer of the United States in the constitutional sense.

The temporary and transient character of their duties is the decisive factor in keeping even great diplomatic functionaries in the class of agents whom the President may appoint without the consent of the Senate. Chief Justice Marshall dealt with this aspect of the question of office in 1823.<sup>142</sup> "An office is defined to be a public charge or employment. . . . Although an office is an employment, it does not follow that every employment is an office. A man may certainly be employed under a contract express or implied to do an act or perform a service without becoming an officer. But if the duty be a continuing one, which is defined by rules prescribed by the Government, and not by contract, which an individual is appointed by the Government to perform, who enters on the duties appertaining to his station without any contract defining them, if those duties continue although the person be changed, it seems very difficult to distinguish such a charge or employment from an office." In *United States v. Hartwell*,<sup>143</sup> the court defined an office as "a

<sup>142</sup> U. S. v. Maurice, 2 Brock., 96.

<sup>143</sup> 6 Wallace, 393.

public station conferred by the appointment of Government. The term embraces the ideas of tenure, duration, emolument, and duties," and duties continuing and permanent, not occasional or temporary.

In the *Matter of Hathaway*,<sup>144</sup> the court said, "While the duties . . . were of a public nature . . . still . . . their authority is restricted to specific matters, and no general powers are conferred upon them authorizing them to act in respect to all like cases, or in any case or matter other than specified and named in their appointment. . . . The trust they exercise and the duties they perform are 'transient and occasional'. . . . 'Public Office' as used in the Constitution, has respect to a permanent trust to be exercised in behalf of the Government, or of all citizens who may need the intervention of a public functionary or officer, and in all matters within the range of the duties pertaining to the character of the trust. It means a right to exercise generally, and in all proper cases, the functions of a public trust or employment." The court might well have been dealing with a case involving a special agent. "One whose position is without tenure, duration, continuing emolument or continuous duties, who acts only occasionally and temporarily, therefore, is not an 'officer' within the meaning of the clause of the Constitution governing the appointment of such officers (Art. II, Sec. 2)." <sup>145</sup> "Public officers must exercise con-

<sup>144</sup> 71 N. Y., 238.

<sup>145</sup> The Encyclopedia of the United States Supreme Court Reports, ed. T. J. Michie (Charlottesville, 1908-1910), X, 370, citing

tinuously, and as part of the regular and permanent administration of the Government some important public powers, trust or duties." <sup>146</sup>

Executive agents used in connection with the diplomatic business of the United States have never met these tests of office. None of them, with the exception of a single group, which will be especially noticed, were appointed for service extending more than a few months. One or two were used on a series of separate missions which kept them in substantially continuous employment for some years. Such an executive agent was A. Dudley Mann. But even Mann had four separate missions, their only connection being that they succeeded one another very closely in point of time. Not only do the facts ascertained about the actual duration of these missions testify to their temporary character; the titles employed are eloquent of the transient nature of the appointments. The most common term applied to them is "special agent," a term employed in such a large number of cases that it has tended to give its name to a much wider class. Even when some other title is used, the word "special" is often employed, as, for example, "ambassador on

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*Auffmordt v. Hedden*, 137 U. S., 310, 327; *U. S. v. Germaine*, 99 U. S., 508, 510, 511; *Hall v. Wisconsin*, 103 U. S., 5, 8, 9; *U. S. v. Mouat*, 124 U. S., 303, 307; *U. S. v. Smith*, 124 U. S., 525, 532.

<sup>146</sup> *Ibid.* The language is taken from the decision in *Sheboygan Co. v. Parker*, 3 Wallace 93. See also constitution of Illinois, 1870, Sec. 24, Thorpe, *Constitutions and Charters*, II, 1027; *Opin. Atty. Gen.*, XXIV, 12.

special mission." It does not need argument to prove that "special" has reference to something temporary in character. Occasionally the word "commissioner" is used. But this, in diplomatic usage, ordinarily refers to a person commissioned to perform a single specified duty, and not to an official of general and continuing powers.

This has been the point of view of the government. "The Government has no authority to employ an agent except for specified objects which can be accomplished in a short period."<sup>147</sup> The executive department does not regard special agents as officers, no matter what diplomatic title they bear.<sup>148</sup> The "Official Register" may be searched in vain for the name of Whitelaw Reid, ambassador on special mission to Great Britain in 1897, and again in 1902, or for the name of John Hays Hammond, ambassador on special mission to the same country in 1911. These men, like Mr. Root and his associates, were ambassadors and ministers only from the point of view of international law; from the point of view of constitutional law they were private agents of the President, appointed under his executive powers in the conduct of the foreign relations of the United States.

That the government has not regarded these men as officers, because of the temporary nature of their

<sup>147</sup> Marcy to Cazneau, Nov. 2, 1853, MS. Inst. Special Missions, III, 32.

<sup>148</sup> Atty. Gen. Knox, Oct. 10, 1901, Opin. Atty. Gen., XXIII, 533.



duties, is evidenced by the frequent use of officers of the army and navy as diplomatic agents. The fact has already been noticed that a statute declares the acceptance of diplomatic office automatically vacates the officer's position.<sup>149</sup> The act was passed in 1868. But after that time Commodore Shufeldt signed a treaty with Corea in 1882, and in 1905 Commander Dillingham negotiated the famous agreement with Sanchez, secretary of foreign relations in the Dominican Republic. Yet neither of these naval officers lost his rank. Naval officers and army officers signed conventions relating to wireless telegraphy and to the revision of the Geneva convention, all acting under appointment by and instructions from the Department of State. General Tasker H. Bliss signed a treaty with Cuba in 1899 and the treaty of Versailles in 1919. The list does not pretend, or need, to be exhaustive. Enough cases have been instanced to make it sufficiently clear that the attitude assumed by Grant and Fish in the Babcock case was exceptional, and mistaken.

The same inference as to the nonofficial character of these agents may be drawn from the employment of members of the Senate and House of Representatives. There is a constitutional prohibition against members of the national legislature holding other office under the United States. The commission which negotiated the treaty of peace with Spain was partially composed of Senators, who would have violated the Constitution if acceptance of the place meant accep-

<sup>149</sup> See above, p. 164, n. 126.

tance of office. President McKinley appointed members of Congress to a number of other commissions. It is true that his action caused protest, but the protest was based chiefly on the ground that members of Congress compromised their legislative independence by acting under executive direction, and it was on that basis that protest was made to President McKinley.<sup>150</sup> The matter, moreover, was referred to the judiciary committee of the House, with the inquiry whether members had vacated their seats by accepting appointments of this character. The very able report of the committee is noticed more at length elsewhere; it suffices at this point to mention the fact that the committee held such positions to be not offices, on the ground that the duties were temporary.<sup>151</sup> The attitude of protest assumed by the Senate against the appointments of President McKinley was not permanently sustained. There was no concealment of senatorial chagrin at the failure of President Wilson to include Senators upon the commission to negotiate peace at the close of the Great

<sup>150</sup> Hoar, *Autobiography*, loc. cit. The duties of the negotiator of a treaty are analogous to the functions of government counsel in a case at law. Neither are officers. While it is to be noticed, as Senator Hoar points out, that Congress by statute has forbidden under severe penalty the acceptance of duties as government counsel by a member of Congress, it is important to bear in mind that it was a statute, not the Constitution, which created the prohibition. It was a matter of policy, not of constitutional law.

<sup>151</sup> Serial 3841, 55 Cong. 3 Sess., H. Rpt. 2205. For other instances of such appointments, see international standard of value commission, C. S. Olcott, *William McKinley* (Boston, 1916), I, 355 ff.

War. The action of President Harding in appointing two Senators members on the commission to represent the United States at the time of the Washington conference was not subjected to criticism such as that which had been aimed at President McKinley.

Another evidence of the fact that special agents are not regarded as officers is to be found in the fact that in numerous cases diplomatic officers of the United States have been allowed temporarily to perform services of a diplomatic character for foreign governments. A United States minister may even negotiate a treaty for a foreign government. If performance of diplomatic services made them officers of a foreign government, it could not be permitted.<sup>152</sup> The duties of executive agents, moreover, do not meet with the usual tests of office in that they are not "defined by law."<sup>153</sup> The duties of such an agent may grow out of a law, as for example, when a law of May 27, 1908, provided "for the participation by the United States, . . . the sending of a commissioner, . . . fifty thousand dollars, . . . to be expended under the direction of the Secretary of State."<sup>154</sup> Clearly the commissioner was to have duties, but the duties were left to be defined by the secretary. Indeed, it is a part of the definition of an

<sup>152</sup> Opin. Atty. Gen., XIII, 537.

<sup>153</sup> F. R. Mechem, *A Treatise on the Law of Public Offices and Officers* (Chicago, 1890), Sec. 5.

<sup>154</sup> Stat. at Large, XXXV, 380.

executive agent that his duties are dependent upon executive direction.<sup>155</sup>

Finally, it is a point of some legal importance that the position of executive agent has no "emolument" directly attached to it, for that is one of the customary attributes of office upon which the Supreme Court has laid emphasis. It is true that agents of the President are usually paid. Sometimes they are paid from funds specially appropriated by Congress for the purpose, either before or after their employment. The President is free to pay or not to pay; if he chooses to pay he may set the amount, within the limits of the funds available. This in legal contemplation does not constitute emolument, which is payment directly, specifically, and usually by law, attached to a given office or employment.<sup>156</sup>

There is just one group of agents who do not appear to come in the class of men appointed for temporary or occasional service, and who must, in consequence, have a word of special notice. Before Congress in 1855 and 1856 adopted comprehensive legislation concerning the diplomatic and consular services, there occasionally appeared an "agent for commerce and

<sup>155</sup> The only exception is commissioners whose duties are defined by treaties. Their nonofficial character arises from other sources.

<sup>156</sup> See *Opin. Atty. Gen.*, VII, 184 ff. The point of view set forth in the text is in accord with decisions of the Comptroller of the Treasury to the effect that a special assistant United States Attorney was not an officer (*Decisions of the First Comptroller in the Department of the Treasury of the United States* [Washington, 1880- —], II, 271), nor was a commissioner to select a site for a public building (*ibid.*, 467).

seamen" or a "commercial agent." These were men who exercised consular powers, but were not nominated to the Senate. Secretary of State Everett, in notifying an appointee, said, "The duties of a commercial agent are similar to those of a consul, and the same instructions are given to each, yet he does not, like the latter, bear a commission from the government; this is given only under the seal of the United States. He is a mere Executive agent sent abroad for the promotion and advantage of American commercial interests, selected by the Department, corresponding with, instructed, and controlled by the Department, and bearing an authority from the President under the seal of the Department. His recognition by the local authorities where he resides, although always important as affording facilities in the performance of his duties, is not necessary to it. In some instances these agencies are conferred upon persons who are directed to keep the trust confided to them secret, and these appointments do not necessarily carry with them a recognition on the part of this Government of the existing authority at the places to which they are made."<sup>157</sup>

<sup>157</sup> Everett to Lance, Jan. 26, 1853, Moore, Digest, V, 3. Other similar statements can be found. Pickering to Savage, May 3, 1799, MS. Inst. U. S. Mins, V, 117-118; Smith, Secretary of State, to Shaler, June 16, 1810, Mississippi Valley Historical Review, II, 566; Adams to Jones, Sept. 19, 1820, MS. Despatches to Consuls, II, 217; Adams to Anderson, May 27, 1823, Writings of J. Q. Adams, ed. W. C. Ford (New York, 1913-1917), VII, 478, 479; also Secretary of State Forsyth in 1839, Opinion of the Bureau of Claims (Solicitor's Office), Department of State,

These appointments of commercial agents can be explained in only one way. Refusal of the state to which they were sent to receive consuls, or refusal of the United States to recognize the existing authority in the place to which they were sent, made the appointment of a consul impossible. Yet the commercial and political interest of the United States made a resident agent necessary, or at least highly desirable. Hence the President, under his general executive power, under his power to see that the laws be faithfully executed, and his power to conduct foreign relations, made an informal appointment,—informal from the point of view of international law, and unofficial from the point of view of constitutional law. While it is true that these men were not restricted to one act,—an inquiry or a negotiation,—they were nevertheless regarded as temporary and transient. The situation was always regarded as abnormal and at first opportunity the appointment was regularized.<sup>158</sup> While the United States would not “fight upon the question whether their representative at Havana should be called a commercial agent or a consul,” the government

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April 17, 1872. For status of such agents in Haiti, see Serial 420, Doc. 36, 77, 81, 82. For status of such agents in Cuba, see Everett, Minister to Spain, to Clay, Secretary of State, Sept. 25, 1825, Serial 648, 32 Cong. I Sess., H. Ex. Doc. 121, 24-25. The effect of the law of 1855 is discussed in a long opinion, April 17, 1872, Bureau of Claims (Solicitor's Office), Department of State. It has many misapprehensions due to the failure to distinguish an executive agent from an inferior officer.

<sup>158</sup> Adams to Anderson, loc. cit.

was willing to do a great deal to have a consul replace a commercial agent.<sup>159</sup> In short, these men stood in place of a consul only so long as some bar prevented a regular consular appointment. The interim might be long or short, but the expedient was regarded as temporary.

### III. *Rank and Title*

Granted that executive agents are not officers, how can the President make an appointment to the specific rank of ambassador, when the Constitution states explicitly that ambassadors must be nominated to the Senate? The answer, in this instance, is not to be found in long-established custom, dating from an early interpretation of the Constitution by those who were concerned in framing that instrument. On the contrary, the practice of assigning rank to executive agents dates only from the last decade of the nineteenth century, and early opinions were uniformly to the effect that such a procedure would not be proper.

In 1791 Thomas Barclay was being sent to Morocco, and it was decided to send him "without any defined character, in order to save expense." The emperor, however, had intimated that he expected the United States to send an "ambassador." Barclay, in discussing matters with Jefferson, "observed that if his character was undefined, they would consider him as an Ambassador, and expect proportional liberalities, and he thought it best to fix his character to consul,

<sup>159</sup> Everett to Clay, loc. cit.



which was the lowest grade that could be employed." Jefferson accepted the suggestion, made out a new commission and letter of credence, and instructed Barclay to inform the emperor that whatever might be the "custom of the Old World, . . . it is not ours; that we never sent an ambassador to any nation."<sup>160</sup> Washington had some qualms in the matter and referred to Jefferson's judgment the question whether such a commission might "be given without the agency of the Senate."<sup>161</sup> Jefferson resolved the difficulty by incorporating in Barclay's instructions a clause to the effect that, being issued in a recess of the Senate, the commission would expire at the end of the next session. No notice of the temporary nature of the title was incorporated in Barclay's commission, because "it might perhaps embarrass." It was expected that the mission would be completed before the end of the next Senate session.<sup>162</sup>

This was a case where title and rank were given to an executive agent. There was no intention to establish a consulate in Morocco, nor was Barclay to perform any of the ordinary functions of a consul. He was sent as a negotiator. Under international practice consuls in the Barbary States might have that function

<sup>160</sup> Jefferson to Washington, March 27, 1791, Washington Papers, Bureau of Rolls and Library, Department of State, XXI, 13; Jefferson to Barclay, May 13, 1791, MS. Inst. U. S. Mins., I, 45.

<sup>161</sup> Washington to Jefferson, April 1, 1791, Washington Papers, XXI, 17-18.

<sup>162</sup> Jefferson to Barclay, May 13, 1791, loc. cit.

as well as the usual consular duties. The lowest possible grade which a negotiator might have was selected from motives of economy. But neither Washington nor Jefferson thought it within the range of executive power to confer the title and rank of consul while the Senate was in session, and they did not regard it as possible for the appointee to hold it after the close of the next session of the Senate.

When, in 1792, Jefferson received word that Spain was ready to negotiate some arrangement with reference to the navigation of the Mississippi, it was thought wise to associate with the chargé at Madrid, William Carmichael, "some one of the ministers of the United States in Europe." William Short, the chargé at Paris, was selected. This involved merely the despatch of full powers to the regular chargé in Spain and the temporary transfer of another. Yet Washington submitted the nominations of Carmichael and Short as "commissioners plenipotentiary,"<sup>163</sup> despite the fact that no other rank or title was to be conferred upon them.

During the early years of the new government it was a frequent practice,—relatively more frequent than in recent years,—to appoint special ministers. The first such was John Jay. He was to hold the rank and title of envoy extraordinary, and Washington considered no other course except sending his name to the Senate. Besides criticizing Jay's record and personal qualifications, Senators objected on the grounds that

<sup>163</sup> Sen. Ex. Jol., I, 95-96, 99.

an additional minister, beyond the one regularly stationed in London, was unnecessary and unduly expensive, and that "to permit Judges of the Supreme Court to hold at the same time any other office or employment emanating from and holden at the pleasure of the Executive, is contrary to the spirit of the Constitution, and, as tending to expose them to the influence of the Executive, is mischievous and impolitic." Resolutions on these points were defeated, but the whole episode revealed clearly enough that Washington did not regard it proper for him to appoint Jay a special minister without the approval of the Senate, and that the Senate felt it had a free hand in considering the nomination.<sup>164</sup>

Washington's view of the matter was set forth more precisely later in the same year, and in connection with Jay's mission. Samuel Bayard was sent to London, about November 1, 1794, to deal in detail with cases of illegal captures of American vessels. These cases Jay had been attempting to care for in connection with other important aspects of his mission.<sup>165</sup> Before sending him, the question of a "formal appointment came up. . . . It was thought inexpedient."<sup>166</sup> Later Bayard complained at not having a formal commission, and Pickering, who had succeeded Randolph as Secre-

<sup>164</sup> *Ibid.*, 150, 152; S. F. Bemis, *Jay's Treaty, a Study in Commerce and Diplomacy* (New York, 1923), 197, n. 32.

<sup>165</sup> Randolph to Bayard, Nov. 7, 1794, MS. Domestic Letters, VII, 381-384.

<sup>166</sup> *Id.* to *id.*, MS. Inst. U. S. Mins., II, 348-352.

tary of State, reminded Bayard of the earlier decision, and conjectured that it was based upon "doubt of the power of the Executive to give a formal commission, though the necessity of the case warranted an informal appointment, with all the authority which could have been conferred by a commission."<sup>167</sup>

If Thomas Pinckney, as minister to Great Britain, was put in a somewhat invidious position by the mission of Jay, Washington was able to show his confidence in Pinckney by sending him, in the same year, as special envoy to Spain. Though this was merely a temporary transfer, such as would be made unhesitatingly today upon executive authority alone, a nomination was sent to the Senate.<sup>168</sup>

Washington employed a number of executive agents. But he did not give rank or title to anyone charged with diplomatic business without sending a nomination to the Senate, save in the case of Barclay, and he went during a recess of that body. John Adams followed exactly the same practice. When Charles Cotesworth Pinckney, John Marshall, and Elbridge Gerry were made special ministers to France in 1797, their nominations were submitted to the Senate.<sup>169</sup> After the X, Y, Z scandal and the rupture of negotiations, the new mission of Oliver Ellsworth, William Vans Murray, and Governor Davie was constituted only with the approval of the Senate.<sup>170</sup>

<sup>167</sup> Pickering to Bayard, July 27, 1796, MS. Inst. U. S. Mins., III, 208-211.

<sup>168</sup> Sen. Ex. Jol., I, 163, 164.

<sup>169</sup> Ibid., 241-242, 244, 245.

<sup>170</sup> Ibid., 318-319, 326-327.

The inferences which one would naturally draw from those appointments are explicitly confirmed by statements made in connection with a special mission to Sweden. John Quincy Adams, minister at Berlin, was sent, during a Senate recess, a full power to negotiate with Sweden, "but as that commission, if not renewed with the advice and consent of the Senate, will expire with the present session of Congress, I now nominate John Quincy Adams, to be a Commissioner, with full powers to negotiate a treaty of amity and commerce with His Majesty, the King of Sweden."<sup>171</sup> In the same way, though the treaty was to be negotiated in London, his regular post, Richard Rush was nominated to the Senate as "a Minister Plenipotentiary, for the special purpose of negotiating . . . a treaty of amity and commerce between the United States and the Emperor of all the Russias."<sup>172</sup> Precisely the same procedure marked the appointment of William Smith, minister to Portugal, as special minister to negotiate a treaty with the Sublime Porte.<sup>173</sup>

Jefferson's administrations saw a whole series of formal special missions, in a number of which James Monroe figured. In 1803 he was nominated minister extraordinary and plenipotentiary with Livingston in Paris, and with Charles Pinckney in Spain, for the purchase of part of Louisiana.<sup>174</sup> When Pinckney

<sup>171</sup> *Ibid.*, 265.

<sup>172</sup> *Ibid.*, 310.

<sup>173</sup> *Ibid.*, 311.

<sup>174</sup> *Ibid.*, 431-432, 436.

resigned, Jefferson regarded Monroe's commission as "ineffectual," and sent his name to the Senate again as minister extraordinary and plenipotentiary to Spain.<sup>175</sup> As Monroe had been a special minister in addition to the regular diplomatic officers in Paris and Madrid, so in 1806 William Pinckney was associated with Monroe, then minister in London, as commissioner plenipotentiary "for settling all matters . . . relative to wrongs committed between the parties on the high seas, or other waters, and for establishing the principles of navigation and commerce between them."<sup>176</sup> The nomination of John Armstrong, American minister in Paris, and James Bowdoin, minister in Madrid, as "Commissioners Plenipotentiary and Extraordinary" was precisely similar.<sup>177</sup>

Madison followed the precedents without any deviation. Spoliation claims made necessary the despatch of a negotiator to Denmark, where the United States did not wish to keep a regular minister. George W. Erving was sent as special minister with the concurrence of the Senate. He was charged with exactly the same duty which was later confided to an informal executive agent.<sup>178</sup> The special mission of William Pinkney to Naples grew out of spoliation claims

<sup>175</sup> Sen. Ex. Jol., I, 471; William Plumer's Memorandum of Proceedings in the United States Senate, ed. E. S. Brown (New York, 1923), 194-195.

<sup>176</sup> Sen. Ex. Jol., II, 35; Plumer's Memorandum, 488-489, 491-492.

<sup>177</sup> Sen. Ex. Jol., II, 25.

<sup>178</sup> Ibid., 156-158.

against the Kingdom of the Two Sicilies. In this instance the Senate at first refused to approve, but subsequently, after "further information," agreed to his appointment as special minister.<sup>179</sup>

The notable case in Madison's administrations grew out of the appointment of commissioners to make peace with England. During a Senate recess Albert Gallatin, John Quincy Adams, and James A. Bayard were appointed envoys extraordinary and ministers plenipotentiary to negotiate and sign a treaty of peace with Great Britain, under the mediation of the Emperor of Russia, and to negotiate and sign a treaty of commerce with Great Britain, and also a treaty of commerce with Russia. When the Senate reconvened, Madison sent in a message nominating "them to the same offices."<sup>180</sup> Thereupon the Senate began to manifest signs of displeasure, which culminated in the passage of a resolution expressing the opinion that "the powers and duties of the Secretary of the Department of the Treasury, and those of an Envoy Extraordinary to a foreign power, are so incompatible that they ought not to be, and remain united, in the same person."<sup>181</sup> Madison sent in nominations again, omitting Gallatin, and added his nomination once more after appointing a new Secretary of the Treasury.<sup>182</sup>

<sup>179</sup> Ibid., 32, 35, 45, 46.

<sup>180</sup> Ibid., 346.

<sup>181</sup> Ibid., 348-354; see Salmon, "History of the Appointing Power of the President," 117.

<sup>182</sup> Sen. Ex Jol., II, 451-454, 470-471.



Thus it is manifest that all the Presidents connected with the framing of the Constitution or the institution of the new government followed a policy which clearly shows they did not regard themselves authorized to appoint executive agents and give them the rank and title of regular diplomatic officers. John Quincy Adams held the same view. He ran into difficulties with the Senate over the "acceptance" of an invitation to the Panama congress. But he made it explicit that he did not feel competent to appoint delegates with the rank of minister without the concurrence of the Senate. On this point he was able to disarm criticism, and after long discussion upon the advisability of attending the conference, his nominees were confirmed.<sup>183</sup> When the conference was transferred to Tacubaya, Adams nominated Joel R. Poinsett as special minister to replace Anderson, who had died.<sup>184</sup>

In 1841, when the Secretary of War asked an opinion upon a point connected with the President's power of appointment, the Attorney General remarked that it was a "still unsettled question whether a President may send an extraordinary embassy abroad during a recess," and he referred to Madison's experience in making peace at the close of the War of 1812 by way of illustration.<sup>185</sup> Polk had no hesitation in appointing Nicholas P. Trist an executive agent to negotiate a treaty with Mexico. But when Trist's treaty was to

<sup>183</sup> Sen. Ex. Jol., III, 457-459, 473-490, 514, 518.

<sup>184</sup> Ibid., 554, 567.

<sup>185</sup> Opin. Atty. Gen., III, 675.

be amended, he desired to have a special minister. The moment it was proposed to give rank and title to the negotiator, he deemed it necessary to send the nomination to the Senate. Consequently, Sevier and Clifford, both of whom had rank and title, were confirmed by that body.<sup>186</sup> It is, perhaps, worthy of remark that the American members of the joint high commission to negotiate the treaty of Washington in 1871 were nominated to the Senate, though they had no title other than "commissioners";<sup>187</sup> and the special commission to China in 1880, composed of John F. Smith, William H. Trescot, and James B. Angell, was constituted likewise with the consent of the Senate.<sup>188</sup>

The first suggestion that the President might give rank and title to an executive agent occurred during Grant's administration. Sumner was heatedly opposing a bill providing for a commission to go to Santo Domingo to investigate. In the course of a speech, marked in some passages by great extravagance in expression, Sumner said the President "may, if he sees fit, appoint agents, calling them any name that he pleases, calling them commissioners; calling them ambassadors, perhaps, if he will, though this might raise a constitutional question."<sup>189</sup> When he came to revise

<sup>186</sup> Sen. Ex. Jol., VII, 341-343. These men are improperly listed, Moore, Digest, IV, 453, as having been appointed without the concurrence of the Senate.

<sup>187</sup> Sen. Ex. Jol., XVII, 644, 651.

<sup>188</sup> Ibid., XXII, 283, 284, 307.

<sup>189</sup> Cong. Globe, 41 Cong. 3 Sess., 227.

this passage for his published writings, he struck out the last clauses, ending by saying, "... calling them commissioners or anything else."<sup>190</sup> Upon such a tentative and hesitant expression of opinion little can be predicated.

Late in 1881 President Arthur determined to send a special mission to bring to an end the war between Chile, Bolivia, and Peru.<sup>191</sup> During a recess of the Senate<sup>192</sup> he commissioned William Henry Trescot a special envoy extraordinary and minister plenipotentiary to all three countries.<sup>193</sup> When the Senate reconvened, the nomination was sent in and approved by that body<sup>194</sup> and a new commission issued to Trescot. Trescot was associated in 1882 with ex-President Grant in a commission to negotiate a commercial treaty. In this instance, though they were given no title other than commissioners, their nominations were sent to the Senate, despite the fact that the general practice of sending such nominations had long since been abandoned.<sup>195</sup>

<sup>190</sup> C. Sumner, Works (Boston, 1870-1883), XIV, 97-98. A much more explicit declaration was made by Senator George in 1893. Cong. Record, 58 Cong. 2 Sess., XXVI, 3133-3134.

<sup>191</sup> Richardson, Messages and Papers, VIII, 41-42.

<sup>192</sup> The Senate adjourned Oct. 29, 1881, and met again Dec. 5, 1881. Sen. Ex. Jol., XXIII, 178-179. Trescot was appointed Nov. 28, 1881.

<sup>193</sup> Moore, Digest, IV, 454.

<sup>194</sup> Sen. Ex. Jol., XXIII, 214, 215, 220, 222.

<sup>195</sup> Ibid., XXIII, 520, 521; see Moore, Digest, IV, 455.

Five days after the adjournment of the Senate, March 9, 1891, John W. Foster, who was in charge of negotiating reciprocity agreements after the passage of the McKinley tariff, was appointed a special minister to Spain. His duty was to negotiate a reciprocity treaty. The service was a very brief one, lasting in all only six weeks. It was, therefore, entirely completed long before the Senate reconvened in December, and no nomination to the Senate was called for. This case has been cited as a precedent for granting rank and title to an executive agent, but the circumstances are such that it cannot safely be so called.

The factor which seems to have led the President to alter the practice of never conferring rank and title upon an executive agent was the enactment by which Congress provided for the grade of ambassador. The act was unheralded. The President had not recommended any such provision. The Department of State had long taken the attitude that such a grade was not desired. But the provision was inserted as a rider in an appropriation bill and went through Congress at the close of a short session without a word of comment.<sup>196</sup> Once the law was on the books and had been translated into reality by the exchange of ambassadors with Great Britain, there ensued certain consequences which had not been foreseen.

The United States had accepted the classification of diplomatic officers as established by the congress of

<sup>196</sup> Foster, *Practice of Diplomacy*, 20-26; Moore, *Digest*, IV, 737-739.

Vienna in 1815, and amended by the congress of Aix-la-Chapelle in 1818.<sup>197</sup> The second of the rules adopted at Vienna was to the effect that "ambassadors, legates, or nuncios only have the representative character." It referred to the theory that an ambassador represented the person of his sovereign. The practical advantage growing out of this character,—the privilege of demanding an interview with the head of the state,—had largely evaporated.<sup>198</sup> There remained, as so often happens when the substance of privilege is destroyed, certain ceremonial rights.<sup>199</sup> Standing in the stead of the chief of his state, the ambassador is regarded as the equal of the head of the state to which he is accredited, and is to receive honors similar to those which would be accorded his sovereign.<sup>200</sup>

Possessing representatives of such exalted dignity, the United States was in a position to participate in certain ceremonial functions from which it had hitherto usually abstained. Before the grade of ambassador was employed, the President could not send a personal representative who would be accorded the position of dignity or precedence at a coronation or royal marriage befitting the representative of an important power.

<sup>197</sup> Moore, *Digest*, IV, 430-431; Foster, *Practice of Diplomacy*, 20.

<sup>198</sup> E. M. Satow, *Guide to Diplomatic Practice* (2d rev. ed., London, 1922), I, 239; W. E. Hall, *International Law* (6th ed., London, 1909), 295.

<sup>199</sup> Moore, *Digest*, IV, 740.

<sup>200</sup> C. C. Hyde, *International Law, Chiefly as Interpreted and Applied by the United States* (Boston, 1922), I, 782-783; Moore, *Digest*, IV, 737-738.

Rather than take rank upon the fringes of the assembly, at a lower table, and after the representatives of lesser powers, the United States had simply abstained, for the most part, from participation in such ceremonies.<sup>201</sup>

A subtle change, moreover, had been coming over the American attitude toward such functions. A small and weak country whose comparatively novel republican principles were sharply contrasted with the prevailing monarchical type might well look askance at the panoply and pageantry of old world institutions. There was suspicion and hostility and some disdain on both sides. A vigorous if somewhat immature democracy might scorn uniform and court dress and all that went with social and governmental principles opposite from our own. By the last decade of the nineteenth century, however, republicanism had won its way as a principle of government, monarchy was no longer an aggressive principle, and the two might meet and mingle with less sense of strain.<sup>202</sup> There was still some feeling that ambassadors, "a kind of monarchical class," ill befitted "our simple social democracy," or "our plain democratic pretensions,"<sup>203</sup> but it was rapidly dying out. Political maturity and the sense of being a

<sup>201</sup> This abstention was not complete. Several special missions were sent to Russia between 1866 and 1896. See below, 760-762.

<sup>202</sup> See, on observance of formalities, Hyde, *International Law*, I, 780, and nn. 1, 4.

<sup>203</sup> Bayard, Secretary of State, to Phelps, minister to Great Britain, July 2, 1885, Moore, *Digest*, IV, 739; Foster, *Practice of Diplomacy*, 24.



great power made democracy less self-conscious in world society, and but little political capital could be made by an opposition party out of courteous recognition of great domestic events in a foreign state. Having ambassadors, moreover, the United States was expected to take its part in great ceremonial occasions. It was one of the things that went with the pretensions the rank implied! And there were reasons of policy,—such as the cultivation of good feeling,—for so doing.

As Great Britain had been the first to exchange official ambassadors, so that nation was the first to invite the President to send a special ambassador. The occasion was the sixtieth anniversary of Queen Victoria's accession to the throne. Inquiries were made, March 30, 1897, by Sir Julian Pauncefote, the ambassador in Washington, "whether it is the intention of the President of the United States to send a special mission of congratulation." President McKinley decided to do so. The appointee was to stand in his stead. As it is the President who acts alone in sending congratulations upon a birthday or any similar event, so the President was to be personally represented upon this occasion. The personal representatives of the sovereigns of Europe who attended would all hold the rank of ambassador. It was deemed almost essential that the President's *alter ego* should hold the same rank if he was to participate on an equal footing with the other representatives of chiefs of state. Whitelaw Reid, therefore, was appointed ambassador extraordi-



nary on special mission,<sup>204</sup> and became the first executive agent to have that rank or title. The United States had simply adopted the usage common to European nations.<sup>205</sup>

Once the precedent was established, practice came to conform to it very quickly. Upon the death of Queen Victoria in 1901, Joseph H. Choate, the resident ambassador, was appointed a special ambassador to attend the funeral and to convey the sympathy of the President to the new king.<sup>206</sup> Whitelaw Reid was appointed, the next year, special ambassador to the coronation of Edward VII.<sup>207</sup> The marriage of Alphonso XIII of Spain was attended by Frederick W. Whitridge as special ambassador.<sup>208</sup> The inauguration of presidents in Latin America occasionally resulted in special embassies;<sup>209</sup> great national celebrations, such as the centennials of the independence of South American states, were recognized in like manner. As the years went on, the number of ceremonial missions increased; the conferring of rank and title became a matter of routine, so that in instructing a personal representative of the President to attend a coronation in 1911, it was

<sup>204</sup> For. Rel., 1897, 249-251. The Senate was in session, but no nomination was sent in. Sen. Ex. Jol., XXXI.

<sup>205</sup> Mr. A. A. Adey, in a memorandum written shortly before his death, said, "In Whitelaw Reid's case the traditional international usage was observed for the first time by name."

<sup>206</sup> For. Rel., 1901, 211.

<sup>207</sup> Ibid., 1902, 50.

<sup>208</sup> Ibid., 1906, 1343.

<sup>209</sup> E. g. of President Menocal of Cuba. Ibid., 1913, 333.

stated as a general principle that such an appointment "gives rank of ambassador extraordinary and plenipotentiary."<sup>210</sup>

While the practice had been inaugurated in connection with ceremonial missions, it did not remain limited to them, but was extended by analogy to other temporary missions, even those which were political in character. The change did not take place at once, but spread from one sort of special mission to another. Delegates to conferences usually had no title other than "commissioner," "delegate," or "plenipotentiary." But on the occasion of the second Hague conference, in 1907, for the first time, the American representatives were given rank and title. Joseph H. Choate, Horace Porter, and Uriah M. Rose had the rank of "ambassador extraordinary." Minister David Jayne Hill was given no special designation beyond that of commissioner plenipotentiary. Brigadier General Davis, Rear Admiral Sperry, and William I. Buchanan were given the rank of "minister plenipotentiary."<sup>211</sup>

This marked a further departure from tradition by assigning a rank other than that of ambassador. Giving rank and title as ambassador had been explained partly on the basis of the "representative character" of that grade,—an ambassador stood in the place of the head of the state. The same explanation would not serve in giving the rank and title of minister plenipo-

<sup>210</sup> Knox, Secretary of State, to H. King, Nov. 17, 1911, *For. Rel.*, 1911, 711.

<sup>211</sup> *Ibid.*, 1907, 1110.

tentiary. Having established the precedent and built up a practice which allowed the President to assign one rank, his power was simply extended by analogy to the assignment of a different rank. There would be something absurd in the contention that the President could assign the highest diplomatic rank, but nothing less. In any event, practice did not fall into that absurdity.

In 1918 the secretary to the American commission to negotiate peace was given the rank of minister plenipotentiary.<sup>212</sup> The four commissioners who represented the United States at the Washington conference in 1921 held ambassadorial rank,<sup>213</sup>—an instance of unusual interest because two of the members of the delegation were Senators. Thus they were Senators with the rank of ambassador,—an entirely novel situation in our history. A resolution adopted at the Washington conference provided for the constitution of a commission of jurists to consider whether the existing rules of international law “adequately cover new methods of attack or defense,” and if not what changes in the existing rules should be adopted. John Bassett Moore was appointed ambassador extraordinary to serve as the American delegate.<sup>214</sup>

From the employment of special ambassadors upon ceremonial occasions and at international conferences, it was but a step to the assignment of rank and title to

<sup>212</sup> *New York Times*, Jan. 8, 1919.

<sup>213</sup> *Ibid.*, Nov. 1, 1921.

<sup>214</sup> Report of the Commission.

the personal representatives of the President sent upon missions of quite different character. There would seem to be nothing in the law, once it was determined that the President could assign rank to his personal representatives, which would take account of whether the special mission was political or merely ceremonial. Clearly the precedent would be easier to set in the latter case, but there was no bar to a further step. Ordinarily there was no need for this action. A political mission need not be formal. No question of precedence or etiquette is involved under usual circumstances. A mere letter of introduction from the President or Secretary of State would suffice to gain *entrée*, and if it were desired that the emissary should sign a treaty or other document, he could be made a commissioner plenipotentiary. Mr. E. M. House, for example, went to England in 1913 and had no difficulty in getting the ear of Sir Edward Grey on the subject of the Panama canal tolls controversy.<sup>215</sup> In the spring and early summer of 1914 he came and went among the capitals of Europe at work on an ambitious plan for peace. His known "relations with the President," it was thought, "would be sufficient without any further credentials."<sup>216</sup> He carried with him a letter from the President.<sup>217</sup> With such informal credentials he

<sup>215</sup> B. J. Hendrick, *Life and Letters of Walter H. Page* (New York, 1924), I, 244-247.

<sup>216</sup> House to Page, Dec. 13, 1913, *ibid.*, 277-278; see, for account of the mission, *ibid.*, 277-300.

<sup>217</sup> *Ibid.*, 288.

was able to secure an interview with the Kaiser alone, just as an "ambassador" might have had.

Under some special circumstances, however, it has seemed desirable to give rank to such a political emissary. This was the case with the high commission sent to Russia soon after the United States entered the Great War. Mr. Elihu Root, the head of the mission, was made a special ambassador, and six colleagues, who did not have an official standing in America, were given the rank of ministers plenipotentiary.<sup>218</sup> The reasons are not far to seek. The mission was designed, in the phrase of one of its distinguished members, as a "grand stand play." It was intended to make an appeal to the imagination of a nation as well as to do business with its government. In the formal language of the Secretary of State, it was "sent primarily to manifest to the Russian government and people the deep sympathetic feeling which exists among all classes in America for the adherence of Russia to the principle of democracy."<sup>219</sup> To that end it was desirable that it should be hedged about with the dignity of rank and title. It was hoped thus to make its work more effective. The United States, having sent special embassies to greet the Romanoffs upon great occasions, was now to send another, more brilliant than any previous, to bid Godspeed to the new democracy.<sup>220</sup> In this respect

<sup>218</sup> *New York Times*, May 16, 1917.

<sup>219</sup> *Ibid.*, June 18, 1917.

<sup>220</sup> See speech of Mr. Root on arrival in Petrograd, *ibid.*, June 17, 1917.

the mission bordered upon the "ceremonial" type, but it had, also, important political objects which might be served to some extent by the possession of rank and title.

The precedents in this matter of giving name and dignity to executive agents were late in our history, but they developed with extraordinary speed. The altered circumstances in which the United States found itself seemed to demand resort to this expedient upon more frequent and a greater variety of occasions. Judging by the facts as they present themselves, it seems clearly to be the point of view of the executive that the President has the authority to appoint agents with such rank and title as he may desire, under his own prerogative. The facts that no protest has been made by the Senate, that Senators, the leaders of both parties in that body, have accepted appointments carrying rank without open criticism from their associates, give presumptive evidence that the opinion of the Senate now agrees with that of the executive.

Precedents, however, must square with the law. They do not alter the Constitution, though they may institute novel interpretations and develop them. How can these precedents be made to agree with the plain words of the Constitution which say that ambassadors should be nominated to the Senate? The difficulty can be resolved only by a consideration of the relation of rank and title to office. This question has had full consideration in connection with one branch of our government,—the army. The diplomatic service and



the army have many analogies. Among them is the emphasis put upon rank, precedence, and the like. In the army the relation of rank to office has come up again and again. It has been the subject of numerous decisions of the Judge Advocate General and has been dealt with by the courts. The leading case is that of *Wood v. United States*.<sup>221</sup> In the Court of Claims Judge Richardson considered the matter exhaustively. "Rank is often used to express something different from office. It then becomes a designation or title of honor, dignity, or distinction" and has relation to "matters or privilege, precedence, and sometimes of command, or by which to determine his pay and emoluments." The Supreme Court, when the matter came before it, pointed out that frequently no change in office followed a change in rank. Thus "rank is not office," and appointment to a given rank does not confer any office. Rank may be an incident to office; office is not incident to rank.

The reasoning used by the courts in these cases applies with equal force to the assignment of rank to diplomatic agents of the President. Conferring a status in the diplomatic scale recognized by international usage does not carry with it appointment to an office. It is merely a designation or title of honor or dignity, and affects the position of the agent abroad in matters of privilege and precedence. It corresponds with the nature or importance of the task and carries

<sup>221</sup> 15 Ct. Cl. 151, affirmed by Supreme Court, 107 U. S. 414.



in its train immunities incident to the specified rank.<sup>222</sup>

It may be true, as Senator Hoar asserted, that the framers of the Constitution did not foresee and would not have approved the practice of using executive agents in its present proportions. It is true, also, that it is difficult to harmonize all phases of this practice, as Corwin says, with the Constitution as a written document. But if the government were trammelled by the intent of the framers, it would be a wholly different government from that we actually have. It is highly doubtful that the framers had the present definition of office in mind, for example; indeed, it is certain that they did not and could not. It is through just such refinements of definition and constitutional interpretation that the instrument of government drafted in 1787 has been able to survive.

The habit of using executive agents, moreover, may fairly be said to be one commencing with the origin of

<sup>222</sup> For the points involved in this argument, see, besides the Wood case, *Hopkins v. U. S.*, 40 Ct. Cl. 110; *Cloud v. U. S.*, 43 Ct. Cl. 69; *Opin. Atty. Gen.*, XVI, 414; XXII, 381; XXV, 491; *Digest of Opinions of the Judge-Advocates of the Army*, ed. C. R. Howland (Washington, 1912), 263, 964: "Neither is rank office, but it may be an attribute or incident of office." See, for related topics, *ibid.*, 634, 636, 809-814. *Opin. Atty. Gen.*, XXII, 480, also shows that mere nomination by President to Senate or mere issuance of a commission does not make an individual an officer. *Serial 4576*, 58 Cong. 2 Sess., *Sen. Rpt.* 2153, shows that nomination to Senate and issuance of a commission may be "for sentimental or other reasons"; it also mentions a civil case where title was altered without creation of a new office.

the government and acquiesced in since that time,<sup>223</sup> a fact which "affords an irresistible answer, and has indeed fixed the construction [of the Constitution]. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled."<sup>224</sup> Again, the Supreme Court said,<sup>225</sup> "The constructions placed upon the Constitution . . . by the men who were contemporary with its formation, many of whom were members of the convention which framed it, is, of itself, entitled to very great weight; and when it is remembered that the rights thus established have not been disputed during nearly a century, it is conclusive." The same point of view was upheld in the case of the *Laura*.<sup>226</sup> William H. Taft, as Solicitor General, in an opinion approved by Attorney General Miller, said, "It seems to me apparent, then, from the cases cited,<sup>227</sup> that where long usage, dating back to a period contemporary with the adoption of the Constitution, sanctions an interpretation of that instrument different from that which would be reached by the ordinary

<sup>223</sup> The protests against it are dealt with elsewhere, and it is shown that they were not either sufficiently uniform, frequent, or effective to destroy "acquiescence."

<sup>224</sup> *Stuart v. Laird*, 1 Cranch 299, 308.

<sup>225</sup> *Lithographic Co. v. Sarony*, 111 U. S. 53, 57.

<sup>226</sup> 114 U. S., 411.

<sup>227</sup> The *Laura* and certain others not mentioned here.

rules of construction were the question a new one, the usage will be followed." <sup>228</sup> It is not necessary to appeal to these opinions to justify the use of special agents, but they do unquestionably give corroborative evidence that the practice is constitutional.

<sup>228</sup> In the matter of postal treaties, see Opin. Atty. Gen., XIX 513.

## CHAPTER IV

### CONGRESSIONAL OPINION REGARDING EXECUTIVE AGENTS USED IN FOREIGN RELATIONS

The record of congressional opinion concerning the use of executive agents may fairly be called political history. The matter has almost never escaped political bias when discussed in either branch of the national legislature. Expressions of opinion have been involved with political expediency. This is aptly illustrated by the experience of the Wilson administration. Sending Mr. Lind to Mexico and Mr. House to Europe brought active remonstrance on the ground that the Constitution had been violated, though neither of these men, so far as was then known, had a recognized title or rank. When, on the other hand, Mr. Root was sent on a much more "public" mission and given the rank of ambassador, scarcely a word of criticism on the ground of constitutionality was heard, though basis for such criticism appeared to be much more obvious.

Another illustration of the fact that these discussions have usually been shaped more with an eye to political advantage than to safeguarding the Constitution is furnished by the fact that discussions have come when political tension was great, rather than upon extraordinary occasions in the use of executive agents. Whole periods when many agents were used, when they were given large powers, when they were given rank or

title have passed; then suddenly, upon some relatively minor occasion, a debate of great vigor and bitterness has broken out. Thus in the vendetta days of American politics the assaults upon John Quincy Adams and upon Jackson were violent. Sumner's hostility to Fish and the policy of Grant's administration precipitated another outburst. Both Cleveland administrations were marked by active discussion. It is difficult to escape the conclusion that the main motives and the chief objectives were political. With that sour candor that so often marked his diary, John Quincy Adams remarked, "The parties in the Senate have always voted for or against these resolutions [of protest at the exercise of power by the executive] according as they supported or opposed the President."<sup>1</sup>

Still another demonstration of the political character of legislative opinion is to be found in the variant opinions of the same men in Congress and in executive office. Not a few notable figures have at different times been on both sides of the question. Levi Woodbury, for example, was the leading spirit in the despatch of Edmund Roberts on his long and extraordinary missions to the Far East, yet at a later day—when out of the administration—he protested vigorously against the use of special agents. John Tyler was a sharp critic of the practice during the presidency of Andrew Jackson, but employed a considerable

<sup>1</sup> Memoirs of John Quincy Adams, comprising portions of his Diary from 1795 to 1848, ed. Charles Francis Adams (Philadelphia, 1874-1877), IX, 131.

number during his own incumbency. Of course, it would not be accurate to say that all the tergiversation was due to politics. Men in office rapidly discover things sealed to them before that time. Nevertheless, a major part of the shifting of opinion has been due to politics. There is not only a record of personal inconsistency; there is also a record of party inconsistency. The Democratic party stoutly defended the appointment of Putnam and Angell to negotiate a fisheries treaty with England, and of Blount to readjust American relations with Hawaii, both of which appointments were bitterly assaulted by the Republicans. But at another time the positions of the two parties were precisely reversed.

A second striking fact about congressional discussion of executive agents is the relative infrequency with which their status has been brought into debate. Considering the number of agents who have been appointed, and the fairly uniform use of them by successive administrations, it would be reasonable to suppose that either there would always be enough members of the Senate or House to give a satisfactory explanation and so virtually eliminate debate altogether, or that there would be a running fire of opposition to the use of agents whenever topics which involved agents were discussed. This infrequency of debate is most striking in the earlier years. During the earlier administrations under the Constitution the respective powers and duties of the branches of the government were pretty thoroughly threshed out. The debate in the House

over the Jay treaty is only one conspicuous example. The question of the President's power in initiating negotiations and in instituting missions was actively discussed a number of times, but a clear-cut debate on special agents was postponed more than a generation, though there were many such appointments in the interim.

The natural place to look for the first discussion of the subject would be in the debates on the establishment of the contingent fund for foreign intercourse. There one might expect to find some discussion of the extraordinary provision for acceptance of the President's certificate as voucher for payments. The discussion would presumably deal with the matter in the broadest and most abstract terms.<sup>2</sup> In point of fact it did not. The Senate discussion is not reported at all, and the House debate only imperfectly; but it is sufficiently clear that the matter of the President's certificate was but a minor—indeed a negligible—factor in the discussion. Nevertheless, the debate is instructive.

It was assumed throughout the discussion that every agent would be nominated to the Senate. The chief question at issue was whether the Senate should be associated with the President in the determination of the sums to be paid to each diplomatic officer. Sherman, of Connecticut, said, for example, "The estab-

<sup>2</sup> Though Gouverneur Morris had been appointed before this time, for the act was not approved until July 1, 1790, and Morris had been instructed in Oct., 1789, the fact of Morris's appointment was not communicated until Feb., 1791. Richardson, *Messages and Papers*, I, 96.



lishment of every treaty requires the voice of the Senate, *as does the appointment of every officer for conducting the business.*"<sup>3</sup> Sedgwick, of Massachusetts, who reported the bill, remarked, "These officers cannot be appointed to any situation, nor to any rank but with the advice and consent of the Senate; no particular character can be selected by the President."<sup>4</sup> In short, a study of the discussion leaves the impression that the members of the House expected all the money appropriated to be expended upon, or by, regularly appointed officers, and that the presidential certificate would furnish means by which officers' expenditures, of a character not to be disclosed in the public interest, might be met. There is no hint of any anticipation that the presidential certificate would be used to pay salaries or expenses to diplomatic agents not nominated to the Senate.

The somewhat confident presumptions with regard to congressional opinion of the executive power which might arise from that debate are overthrown by subsequent events. Washington notified Congress in a message, February 14, 1791, of the appointment and the work of Gouverneur Morris on his mission to England.<sup>5</sup> Four days later, February 18, 1791, Washington informed the Senate of the mission of Colonel David Humphreys to Spain and Portugal.<sup>6</sup> Each of

<sup>3</sup> Annals of Congress, 1 Cong., I, 1085. Italics mine.

<sup>4</sup> Ibid., 1083.

<sup>5</sup> Am. State Papers, For. Rel., I, 121.

<sup>6</sup> Sen. Ex. Jol., I, 74.

these cases constituted a practical assertion of a right on the part of the President to appoint agents for diplomatic service; and in the message regarding Humphreys, Washington traversed Sedgwick's statement by stating that he, the President, had determined upon the character<sup>7</sup> of the diplomatic officer to be sent to Lisbon. Had there been any influential sentiment in Congress which disagreed with Washington, it would have found voice. The message of the fourteenth was referred to a special committee of the House, which brought in a report.<sup>8</sup> But the report did not deny the right of the President to act as he had done, nor was there any discussion in which such denial was made. The only evidences of discontent are to be found in Maclay's "Journal." February 18, 1791, "a number of communications were handed in respecting the appointment of David Humphreys, resident at the Court of Portugal. The President sends first and asks our advice and consent afterward."<sup>9</sup> Of Morris, Maclay wrote, "He has acted in a strange kind of capacity, half pimp, half envoy, or perhaps more properly a kind of political eavesdropper about the British Court, for sometime past."<sup>10</sup> That Maclay's discontent was shared by others there is nothing to indicate.

<sup>7</sup> For example, minister resident.

<sup>8</sup> *Annals of Congress*, 1 Cong., II, 1967.

<sup>9</sup> *Journal of William Maclay*, ed. E. S. Maclay (New York, 1890), 396.

<sup>10</sup> *Ibid.*, 401.

It seems reasonably clear that there was no very positive opinion in Congress during the early years. The argument which might be built up from inferences from the debate on the diplomatic bill is destroyed by the inferences from silence in the face of presidential action. If it had not been anticipated that there would be diplomatic missions without the consent of the Senate, at least the notice from the President that he had instituted such missions did not come with such unexpectedness as to arouse spontaneous protest. These two episodes reveal at the outset the relation of the contingent fund to such missions. It is possible that the necessity for Morris's mission was in Washington's mind when, in his first annual message, he requested "a competent fund designated for defraying the expenses incident to the conduct of our foreign affairs."<sup>11</sup> In any event Morris's appointment<sup>12</sup> antedated the message.<sup>13</sup> This demonstrates the independent origin of the practice of sending agents. On the other hand, Humphreys was sent August 11, 1790, just a little more than a month after the fund was placed at Washington's disposal. His payment from the con-

<sup>11</sup> Annals of Congress, 1 Cong., I, 1058.

<sup>12</sup> Oct. 13, 1789.

<sup>13</sup> The payment of \$2,000 to Morris did not come until after the establishment of the contingent fund, July 1, 1790, for the first payment was made Dec. 19, 1790 (MS. Foreign Letters, CXXI, 425), and the second July 26, 1791 (MS. Inst. U. S. Mins., I, 71). But when Morris was employed, Washington could not be certain that such a fund would be made available. Hence, these facts do not affect the accuracy of the statement made in the text.

tingent fund<sup>14</sup> shows how the establishment of that fund was promptly used to facilitate the use of informal agents.

It is a significant fact that after these two episodes there is no further discussion pertinent to this subject for twenty-three years. During that interval no less than twenty agents were used, some to make inquiries, some to make treaties, some for negotiations, some secretly, some publicly sent. Yet in the face of this developing practice there was silence in Congress, silence, moreover, while political passions ran as high as ever they have run in American history. Even when, February 28, 1814, Christopher Gore introduced a resolution which bears upon this question, it did not deal with executive agents specifically. It was part of a discussion of the power of the President to originate missions abroad, and especially to originate them during the recess of the Senate. The resolution grew out of the action of President Madison in appointing commissioners, during the recess of the Senate, to negotiate peace with England. It read, in part: "The President of the United States having by the Constitution power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session: *Resolved*, That, in the opinion of the Senate, no such vacancy can happen in any office not before full. . . . *Resolved*, That the granting of commissions . . . to negotiate and sign a treaty of peace with the United

<sup>14</sup> Am. State Papers, For. Rel., I, 137-138.

Kingdom of Great Britain and Ireland, . . . was not, in the opinion of the Senate, authorized by the Constitution, inasmuch as a vacancy in that office did not happen during such a recess of the Senate, and as the Senate had not advised and consented to their appointment.”<sup>15</sup>

The pertinency of this resolution to the subject in hand is clear. It was designed to put an end to the origination of treaty-making missions without senatorial consent. While it was aimed specifically against the initiation of such missions during a Senate recess, it was manifestly predicated upon the belief that the President would not attempt to despatch such a commission while the Senate was in session without its consent. Had the theory there contended for prevailed, all the armed conflicts in which the United States has been engaged would have been ended by a process different from that actually employed. The treaties with the Barbary powers, putting at an end their wars against the United States, were made by special agents. Nicholas Trist, who negotiated the treaty of Guadalupe Hidalgo in 1848, was never nominated to the Senate, nor were the signers of the peace with Spain. The American peace mission to negotiate the treaty of Versailles was sent entirely upon the responsibility of the President and without the approval of the Senate. Finally, the separate treaties with Germany, Austria, and Hungary, which were negotiated after the failure of the Senate to approve

<sup>15</sup> Annals of Congress, 13 Cong., I, 651.

the Versailles treaty, were all negotiated by executive agents. Not only would these peace treaties have been differently negotiated, but many other treaty negotiations never would have been undertaken at all, or would have been attempted under circumstances other than those which actually prevailed.

It was later asserted<sup>16</sup> that the Gore resolutions "were calculated for party purposes, merely electioneering."<sup>17</sup> This observation undoubtedly represents a solid basis of fact. But so far as the printed record gives the discussion, while it was neither so long nor so able as later ones, it was no more acrimonious or political than its successors. On one point all who discussed the resolutions seemed to find agreement. All concurred in regarding the negotiators of the treaty as "public ministers" and "officers." The members of Madison's administration undoubtedly agreed with this point of view, else the names would not have been sent to the Senate. Gore sought to establish the criteria of office. He drew a distinction between Gouverneur Morris, a private agent, who "had no letters of credence, commission, power, or authority whatever, whereby he could bind the nation," and the Ghent commissioners, who had all these.<sup>18</sup> With Gore's statement no one took issue. The importance of this

<sup>16</sup> By Smith, of Maryland, in 1831.

<sup>17</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 306. Other members, notably Forsyth, of Georgia, made remarks of similar import. *Ibid.*, 294.

<sup>18</sup> *Annals of Congress*, 13 Cong., I, 753.



tacit assent lies in the fact that many mere executive agents have borne all these marks of office. No one suggested that the nomination of the commissioners to the Senate after the recess had any relation to the question of office. On the contrary, it is abundantly evident that in the opinion of those who participated in the debate it was the nature of the business, their powers, and the evidences of their powers, which constituted them officers. All agreed that if such persons had been despatched during a session of the Senate nominations would have been sent in. That it might be perfectly clear that the Senate could not authorize the President to appoint men without specific nomination, Senator Horsey added in a note, "The Power of the Senate to advise and consent to the appointment of public ministers cannot be delegated."<sup>19</sup>

The point to which participants in the debate gave most attention was the distinction between the origin and nature of diplomatic office, on the one hand, and of domestic office, on the other. The protagonists of the administration followed the views of Madison and Monroe which were noticed in the previous chapter.<sup>20</sup> Senator Bibb, of Kentucky, asserted that diplomatic offices depend "for their existence and continuance upon contingencies. They depend for their original existence upon no law, but are the offspring of the state of our relations with foreign nations. . . . Whether the office of Minister exists or does not—how and

<sup>19</sup> Ibid., 721.

<sup>20</sup> Above, 158-159.



when it exists, are questions not particularly and precisely settled by the Constitution. According to my view of the subject the office commenced with every independent power from the moment the United States became independent, and authorized the appointment of foreign ministers; and it will continue to exist so long as we and they continue independent. . . . As the office with reference to any foreign Power is created by, and dependent for its continuance upon the relations existing between that Power and the United States, its existence and destruction must be contemporaneous with the existence and destruction of those relations. It dies and revives with them. It becomes extinct by war—its revival depends upon contingencies, and when revived it is vacant until it is filled.”<sup>21</sup> In pursuing a sound principle Bibb went astray. He pushed his theory so far that it made every agent sent abroad an officer. He cited the agency of Gouverneur Morris and the mission of John Paul Jones to Algiers as instances of offices arising without laws being necessary to their creation.<sup>22</sup>

Senator Horsey elaborated Bibb's idea somewhat. He found the source of the office of minister in international law. “It is an office without limitation as to number, or duration of tenure, with regard to which neither the Constitution or laws have prescribed the duties. . . . It is an office without limitation of tenure because no one can tell how long it may be necessary

<sup>21</sup> *Annals of Congress*, 13 Cong., I, 699.

<sup>22</sup> *Ibid.*, 704.

to continue it. A negotiation may last a week, or it may last six months. . . . The duties are left with the discretion of the Executive. In short it is an office not created by the Constitution, nor by any municipal law, but emanates from the laws of nations and is common to all civilized governments. . . . The office of public minister, therefore, depends upon events, upon the state of foreign affairs, and is authorized by the laws of the nations.”<sup>23</sup>

Gore ridiculed this “queer fancy,” maintaining that “the Constitution makes no difference between officers who are to execute their functions whether in or out of the United States. There is no pretense or color for such distinction in any sentence or word in the Constitution.”<sup>24</sup> He held that the Jones case was no comfort to his opponents because a Senate resolution had authorized the President to take the measures which led to the Jones, Humphreys, and Barclay missions to the Barbary powers, and by so doing had created the offices to which the men were appointed during a recess of the Senate.<sup>25</sup> Gore regarded a mere Senate resolution, not a law, as adequate to create office—surely as much a “queer fancy” as the notions of Bibb and Horsey. Gore’s resolutions were killed by the gentle method of postponing further consideration to “the first Monday in December next.”<sup>26</sup> The fact

<sup>23</sup> *Ibid.*, 711-712.

<sup>24</sup> *Ibid.*, 749.

<sup>25</sup> *Ibid.*, 752.

<sup>26</sup> *Ibid.*, 759.

that no definite action was taken led to subsequent variant interpretations. Tazewell, of Virginia, speaking in 1831, believed "the conduct of the Senate . . . manifests most distinctly what was the opinion then entertained. If the majority had even doubted, this protest would have been rejected at once. But, as its adoption would have been highly inexpedient at that crisis in our affairs, and its rejection would have been an abandonment of the constitutional rights of the Senate, they very prudently postponed the consideration of the subject."<sup>27</sup> Smith, of Maryland, on the other hand, said the resolutions died a "natural death, scouted by every democratic Senator as untenable, and by some of the federal Senators. I can name three. The two Senators from Rhode Island, and one from Delaware."<sup>28</sup> Forsyth was of much the same opinion,<sup>29</sup> as was also J. Q. Adams.<sup>30</sup>

The discussion is valuable for its misconceptions, if for nothing else. Bibb and Horsey were undoubtedly correct in attempting to establish a difference between the origins of diplomatic and domestic office. They rightly assigned the origin of diplomatic office to international law, which is not only recognized by the Constitution, but declared to be the law of the land,<sup>31</sup> and the officers known to international law are especially

<sup>27</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 228.

<sup>28</sup> *Ibid.*, 306.

<sup>29</sup> *Ibid.*, 294.

<sup>30</sup> J. Q. Adams, *Memoirs*, IX, 131.

<sup>31</sup> Art. I, Sec. 8.

mentioned as officers of the United States.<sup>32</sup> There were precedents available to prove the point that diplomatic office existed without a law being necessary for its creation,<sup>33</sup> but the precedents they selected compelled them to give too wide a range to the word "office," and induced them to a misconception of the nature (as distinguished from the origin) of diplomatic office. They were wrong in calling Morris an officer, and they were wrong in asserting that diplomatic office is "destroyed" when diplomatic relations are temporarily interrupted. Like Monroe, Bibb stated an absolutely sound point of view; namely, that the "office commenced with every independent power from the moment the United States became independent, . . . and it will continue to exist so long as we and they continue independent." Like Monroe, too, Bibb proceeded to muddle matters with illustrations that contradicted his principle. Horsey appears to have been thrown off the track by failure to grasp the very simple concept of a vacant diplomatic office. He seemed to regard a vacant diplomatic office as nonexistent.

The first debate which dealt specifically with special agents came in March, 1818, nearly twenty-nine years after Washington had sent Gouverneur Morris to England. Thus it occurred a whole generation after the practice was begun, and at a time when the framers of the Constitution and the founders of the government had retired from active political life. The participants

<sup>32</sup> Art. II, Sec. 2.

<sup>33</sup> Opin. Atty. Gen., VII, 192-194.

were young men. The discussion was precipitated by the Speaker of the House, Henry Clay, "who was beginning to display symptoms of hostility to the administration."<sup>34</sup> The debate was principally in the House. When the matter reached the Senate, Crittenden seemed likely to raise an issue, but after brief comment the matter ended without a motion.<sup>35</sup> The foundation of this debate was political. Constitutional discussion was mere veneer—and very thin veneer. Clay's object was to embarrass the administration and make political capital for himself. He was met on his own ground. The forces supporting the administration did not spend much energy in meeting his objection, but simply took measures to avoid it. They cut the ground from under his objection and Clay was compelled temporarily to subside.<sup>36</sup>

Occasion for the discussion was found in a clause of an appropriation bill which made specific provision for the compensation and expenses of Rodney, Bland, and Graham on their mission to South America. In opening his attack Clay referred to the folly of the mission, but went on to declare that "it was the Constitutional point it involved that made it obnoxious."

<sup>34</sup> Forsyth, 1831, Cong. Debates, 21 Cong. 2 Sess., VII, 292.

<sup>35</sup> Niles' Weekly Register, April 11, 1818.

<sup>36</sup> Clay immediately returned to the attack from a new vantage ground by moving, March 24, 1818, "to appropriate the sum of eighteen thousand dollars as the outfit and one year's salary of a minister" to the "independent provinces of the River Plata." In this debate Rodney, Bland, and Graham figure incidentally. *Annals of Congress*, 15 Cong. 1 Sess., II, 1468 ff.

These commissioners were such as should have been nominated to the Senate. Moreover, "the President had not only made these appointments without the authority of the Constitution, . . . but in derogation from a positive act of Congress. There was an act of Congress fixing the grade of the only Ministers we sent abroad, and it provided for two cases only, that of Minister Plenipotentiary and that of *Chargé des Affaires*. To the first it assigned a salary of \$9,000, to the last a salary of \$4,500. Here were Commissioners, then, sent with a salary fixed by the sole authority of the President, and not conformable to that prescribed by the law in either of the two grades. If he might assign \$6,000, what was there to prevent his allowance of \$50,000? . . . There was a contingent fund of \$50,000 allowed to the President by law, which he was authorized to expend without rendering to Congress any account of it—it was confided to his discretion, and, if the compensation of the Commissioners had been made from that fund, . . . it would not have been a proper subject for inquiry."<sup>37</sup>

Clay's speech is worthy of analysis. He appears to have believed that Congress must create diplomatic as well as domestic office. He regarded the President as estopped from sending abroad officers of any grade save minister or *chargé*. In this he ran counter to precedent and to the law of the Constitution. The second point worthy of notice is that he appears to have set up the source of remuneration as the criterion

<sup>37</sup> *Annals of Congress*, 15 Cong. 1 Sess., II, 1466.



to determine whether agents were "public" or "private," whether they were officers or not. The appropriation for the contingent fund had become in his mind the authority for the employment of persons by the President without senatorial consent. Hence, if Rodney, Bland, and Graham were paid from a special appropriation they were public officers; if they were paid from the contingent fund they were private agents. This is, surely, an astonishing legal concept. It is true that Clay disapproved the form of the mission even if it were private in character. "The proper course to have adopted was to dispatch an individual unknown to all parties, some intelligent, keen, silent and observing man, of pleasing address and insinuating manners, who concealing the object of his visit, would see and hear everything and report it faithfully."<sup>38</sup> This objection to the form of the mission was based chiefly on expediency, but Clay seemed to regard the contingent fund as designed primarily, at least, if not exclusively, for secret agencies.

If Clay's assault had been more sincere it probably would have provoked a candid reply. As a matter of fact, however, administration protagonists refused to take issue with the Speaker. The chief of them, Forsyth, who like Clay was to become Secretary of State, said distinctly that "whether these were such as required the confirmation of the Senate, . . . he did not know."<sup>39</sup> He appeared to regard them as public in

<sup>38</sup> *Annals of Congress*, 15 Cong. 1 Sess., II, 1465.

<sup>39</sup> *Ibid.*, 1466.



character, for he said, "It was probable that a private man might have obtained this information better; but there was another point to be considered, . . . he might have been thrown into a dungeon" as other American citizens had been.<sup>40</sup> Clay disputed this point. He held that so far as diplomatic immunity was concerned the commissioners were no better off than a private individual would have been.<sup>41</sup>

Not caring to argue with Clay, Forsyth sought a way of escape. Clay had indicated it when he remarked that had the men been paid from the contingent fund no objection could have been raised. After consultation with Lowndes, therefore, Forsyth "proposed to strike from the appropriation bill the specific appropriation, and to add the amount required for the payment of the commissioners to the sum set apart as the contingent fund for foreign intercourse."<sup>42</sup> He explained that the reason such a proposal had not been made originally was because it would have been necessary practically to double the amount, and objections would have been raised on the ground that Congress was ignorant of the object to which it was to be applied.<sup>43</sup> This move on the part of Forsyth satisfied, or at least blocked off, Clay. The amendment was agreed to without a division and proved acceptable to the Senate. "The object was to throw the expenditure

<sup>40</sup> *Ibid.*, 1467.

<sup>41</sup> *Ibid.*, 1467.

<sup>42</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 292, 293.

<sup>43</sup> Annals of Congress, 15 Cong. 1 Sess., II, 1467.

upon that fund which was entrusted to the absolute discretion of the President, to prevent any inferences unfavorable to the controlling power of the Senate in confirming appointments, or of the House in creating offices." <sup>44</sup>

Such was the content of the first debate upon special agents. It cannot be called either profound or illuminating. One man bent on political advantage, another bent on the despatch of business met for a brief tilt. The first used constitutional argument of a very feeble kind as a stalking horse; the other, frankly confessing ignorance on the constitutional point, refused to be stalked. The one certain inference is that there was general agreement that the President was at liberty to appoint as many and such kinds of agents as he chose so long as he paid them from the contingent fund. Clay made a sort of academic exception to this, but did not support it with his vote.

Interestingly enough, the next discussion saw the tables turned. Clay had been sending his shafts at the Monroe administration in which John Quincy Adams was Secretary of State. In 1825, Adams, as President, and Clay, as Secretary of State, were the objects of attack. The occasion arose over one of Clay's favorite projects—the Panama congress. The decision on the part of the administration to participate in the Congress by means of a formal mission was succeeded by long and heated discussions. As when Clay was the aggressor, the heat was largely political; the issue was

<sup>44</sup> Forsyth, 1831, Cong. Debates, 21 Cong. 2 Sess., VII, 293.

manufactured, and the argument suffered accordingly. The first, and most important, of the discussions was held in executive session in the Senate. Subsequently the seal of secrecy was removed, and parts—but only parts—of the arguments were published in the “Congressional Debates.” The discussion turned upon an incidental comment in President Adams’s message of nomination, which will be noticed in a moment. It suffices at this point to say that Adams, having suggested a formal mission, and having nominated ministers, opened the way for one who wanted to offer battle at every step to attack his proposal by insisting that, in view of the delicacy of the situation, it would be better to avoid unwelcome inferences, and even less welcome commitments, by sending private and unofficial representatives in place of a formally appointed mission.

Thomas Hart Benton did just that. Referring to fears of administration supporters that Great Britain, “a power which never sleeps when her interest is at stake, will be before us with her operations upon the Isthmus,” he said: “Granted sir, because that Nation will do what we ought to have done—send an Agent, without diplomatic character or privilege. ‘La Señora de las Naciones’ will doubtless be there; not in the questionable and clumsy shape of a formal Embassy,<sup>45</sup> but in the active, subtle, penetrating and pervading form of unofficial Agents, speaking the language of the

<sup>45</sup> Benton added in a note that two weeks later a British commissioner, Dawkins, was on his way to the Isthmus.

country, and establishing themselves on the basis of social intercourse in every Minister's family; and this is precisely what we should have done. We should have sent an agent, as President Washington sent Gouverneur Morris to London in 1790, or a Commissioner, as President Monroe sent Messrs. Rodney, Prevost, and Brackenridge to South America in 1817. This Panama mission is a case for Agents, and not for Ministers. Every object to be accomplished by Ministers might have been accomplished by Agents or Commissioners, the greater part of the expense saved and the breach of the Constitution, and of the Law of Nations, avoided. Agents or commissioners could have expressed our good wishes, made explanations, held consultations, given advice, if requested, and sent home reports of all they saw and did. This is all that either of the Senators propose the ministers to do, for they agree, with us, that they cannot negotiate treaties. The name of Agent or Commissioner would not have prevented the first citizens of the Republic from going out on this service. Mr. Gouverneur Morris was not inferior to Messrs. Anderson or Sergeant in point of talents, yet upon the letter of President Washington, without diplomatic character or privilege, or ambassadorial outfit, he held consultations with the Duke of Leeds and Mr. Pitt, transmitted the result to his own Government, and paved the way for the commercial treaty which followed. And this did not degrade Mr. Morris, who had been a member of the old Congress, Deputy in the Convention which framed this Constitu-

tion, and member of the Senate under the Constitution, nor prevent him from being appointed, soon after, Minister Plenipotentiary and Envoy Extraordinary to Louis the 16th. So, of Mr. Rodney and of his rank of Commissioner to South America, which did not prevent him from becoming, afterwards, Senator and Minister.”<sup>46</sup>

In the thirty-seven years succeeding the establishment of the government under the Constitution, Benton's argument is the longest reported passage in any congressional discussion devoted to special agents. But it is not impressive. Almost every line reveals its character of special pleading. It fails, moreover, to disclose any considered constitutional theory. Benton puts no emphasis on method of payment, or secrecy, as Clay had done; but lays stress upon the unofficial and nondiplomatic character of the agent and upon his dependence upon “social” rather than political means of gathering information. Apparently the notion that a special agent could negotiate a treaty was entirely foreign to him.

Hayne, of South Carolina, referring to an alleged claim on the part of Adams that he could have sent ministers without the consent of the Senate, made a brief comment pertinent to the point at issue. “Though there is not a line or a principle in any part of the Constitution which authorizes the President, either expressly or by implication, to appoint foreign ministers without the advice and consent of the Senate,

<sup>46</sup> Cong. Debates, 19 Cong. 1 Sess., II, 339.

and though the distinction between *accredited agents* of the Government bearing *commissions*, and the mere private and personal agents of the President is too obvious to escape the most superficial observation, yet the argument urged was, that as Mr. Monroe appointed private agents to visit South America, Mr. Adams had a right to commission Ministers to attend a Congress."<sup>47</sup> In this passage Hayne sets up a new criterion. The key distinction between presidential agents, selected at his will, and public agents, whom he must nominate to the Senate, was whether it was proposed to issue a formal commission or not. Unfortunately Hayne stated the matter precisely backwards. Superficial observation appeared to bear out the distinction, but more careful search would have shown Hayne cases, even before 1825, when formal commissions were issued to mere executive agents. The distinction does not exist, and did not exist in 1825.

The nominations of Anderson and Sergeant were referred to the foreign relations committee of the Senate. It reported January 16, 1826. A less sincere document would be difficult to find. It opened with the remark that the committee had been embarrassed by the fact that the President had "accepted" the invitation, an embarrassment relieved by examination of the documents and discovery that "an express reference was made to the concurrence of the Senate as the indispensable preliminary to the acceptance of this invitation." Neither wing of the statement represents

<sup>47</sup> Cong. Debates, 19 Cong. 1 Sess., II, 172.



genuine fact. The report proceeded to remark that where officers had been created by statute, or where missions had been previously established, the Senate had only to consider the fitness of the President's appointee. "Very different, however, is the case when it is proposed to create new offices by nomination," for in these circumstances the Senate is to consider not merely the fitness of the appointee, but also "the necessity and propriety of creating the offices themselves." In addition to claiming an authority for the Senate which Washington and Jefferson had successfully denied,<sup>48</sup> it set up an interesting constitutional theory of office as "created" by a nomination. At the end the committee reverted to the supposed claim of the President that he could institute the mission acting alone, but refrained from comment because there was a resolution before the Senate dealing with the matter.

The resolution was a fit companion to the report. Bearing the name of Senator Branch, it had been introduced in executive session, December 28, 1825. It consisted of a preamble, which interpreted Adams's annual message of December, 1825, and the message sent in with the nominations of the proposed ministers, into an assertion of "an authority to make such appointment, and to commission them without the advice and consent of the Senate," followed by a resolution of protest.<sup>49</sup> When friends brought it to Adams's attention, he told them that "the preamble or whereas

<sup>48</sup> Jefferson, Writings, V, 441, n. 1.

<sup>49</sup> Sen. Ex. Jol., III, 467.



upon which the resolution was founded, was a statement incorrect in point of fact, charging me with asserting what I never did assert. I said I considered the Executive competent to institute a new mission and appoint Ministers during the recess of the Senate, but that when the Senate were in session they must be nominated.”<sup>50</sup>

From the point of view of this study the debate has many shortcomings. It was not, to begin with, about executive agents at all. Such light as it shed on this topic was reflected light, and the debate was not sufficiently brilliant to make the reflection by any means dazzling. In the second place, the debate is not well reported. Not only is it not complete, but the parts which are printed were not selected on any satisfactory basis. Finally, and most serious, the disingenuous character of the debate affects its value. Branch and his followers divided their energies in an effort, first, to prove that the President said what he did not say; and second, that he did not have the power he was alleged to have claimed. Adams's friends, on the other hand, having his positive assurance that he had never made such a claim, contented themselves with a denial of the first proposition, and a defense of Adams's true position, which was that he had power to originate a new mission during the recess of the Senate. To meet this situation, Branch<sup>51</sup> altered his motion in an effort to make the preamble in strict accord with the

<sup>50</sup> J. Q. Adams, *Memoirs*, VII, 96; see *ibid.*, 99.

<sup>51</sup> March 30, 1826.

facts, but the situation was not materially improved, for the resolution proceeded to draw strained and false inferences from admitted facts.<sup>52</sup> After many sharp interchanges the resolutions were laid on the table April 27, 1826, by a vote of 23 to 21.<sup>53</sup> Tazewell, of Virginia, as in the instance of Gore's resolutions, seemed capable of turning defeat into victory, for he insisted that while the resolution was tabled by a bare majority, "many of that majority believed the rights of the Senate to be such as affirmed, but because the President, while asserting the power had not *used* it, they regarded it as a mere abstract question unnecessary to decide."<sup>54</sup> Forsyth, however, regarded the vote as a fair expression of the opinion of the Senate.

The most important speech was one in support of the resolution by Tazewell. Marked by agility of reasoning, by word-fencing rather than learning in constitutional law, the speech was, nevertheless, laboriously prepared and the facts carefully ascertained. His first significant argument, from the point of view of this study, had to do with precedents, and he laid down a comprehensive doctrine. "I utterly deny the correctness of this doctrine, which seems to create a new substantive, and fruitful source of power, in existing or future Presidents, from the past practices of their predecessors. . . . Let it once be granted, that the practice of one President gives a legitimate author-

<sup>52</sup> Cong. Debates, 19 Cong. 1 Sess., II, 404-405.

<sup>53</sup> Ibid., 642.

<sup>54</sup> Ibid., 21 Cong. 2 Sess., VII, 229.

ity to his successor, and that this authority may be enlarged by analogies, and it must be obvious to all, that the power granted by the people to the Executive, although made by the Constitution but a schoolboy's snow-ball, in a few turns would become a monstrous avalanche, that must one day crush themselves. . . . There can be no other legitimate source of authority than the written Constitution itself. . . . It is true, that, where the language of the Constitution in its grant of power is doubtful, the constant practice under it, regularly and invariably pursued, whenever a case has arisen within the scope of a doubtful grant, and in which practice all have acquiesced, and for a long time, is entitled to very high respect; and perhaps I might even go further, and say, ought to be considered as conclusive, to show that such a practice was of right."<sup>55</sup>

Having laid down this rigid, almost prohibitive, doctrine, Tazewell proceeded to examine the precedents for the origination of a mission during the recess of the Senate by the President alone. The first of these cited by Senator Mills, of Massachusetts, speaking in behalf of Adams, was the mission of John Paul Jones to Algiers in 1792. Tazewell said that Mills asserted Jones to have been a minister appointed to negotiate a treaty of peace and of commerce.<sup>56</sup> It will be instructive to follow Tazewell's argument, because its climax reveals his attitude toward executive agents. He first

<sup>55</sup> Cong. Debates, 19 Cong. 1 Sess., II, 602.

<sup>56</sup> Mills's speech is not reported.

assaulted the value of the Jones mission as a precedent, because—taking it at the value Mills set upon it—it was exceptional, and so failed to meet the standard of regularity and invariability which Tazewell had set. This case came three years after the government was set up. During that period every public minister was nominated to the Senate. “Here then is not one, but a body of precedents, occurring continuously through more than three years of time, during almost every hour of which, occasion not only existed, but invited to exercise the power which is now asserted, and in no one instance was it claimed or used.” <sup>57</sup>

His next point—a favorite of his—was that because Jones was sent to a barbarian people it was no precedent. “Let me not be told, that the constitutional power of the President is the same, whether exerted in reference to a savage or a civilized nation. We all know that this is not so. No appointment of a Minister, who has ever been employed to negotiate for peace, or for anything else, with any Indian tribe, whether dwelling within or without our territory, whether Osage or Seminole, has ever been laid before the Senate for their consent. They are all considered as agents of the President, and not public Ministers of the People. . . . I merely state the fact, which is conclusive to prove that the case of a mission to Algiers or to the Choctaws can never be a precedent to justify a mission to Panama.” <sup>58</sup>

<sup>57</sup> Cong. Debates, II, 608.

<sup>58</sup> Ibid.

His third argument was also a favorite and crops out in other debates. The Jones case was no precedent because there was a state of war, and "war existing, the President of the United States is authorized by the Constitution to send a Minister to negotiate for peace, not under his general power of appointment, but under his special authority to direct the operations of the existing war. I prove it thus: Peace is the sole legitimate object of all war. . . . The President of the United States is, by the Constitution, made Commander in Chief of their army and navy; and in that character is authorized, nay bound, to direct the military force of the country in time of war, so as to accomplish the great object of war, which is peace, in the most speedy and effectual manner his discretion may suggest. And that which he may do in person, if not forbidden by law, he may do by his Minister or agent. Now, sir, can I be wrong when I conclude from such premises that he who may negotiate for peace by the roar of artillery, by the conflagration of cities, by the desolation of a country, by the wailings of widows, the shrieks of orphans, and the groans of dying men—that he who may negotiate for peace by blood and carnage, may do so with pen, ink and paper also?"<sup>59</sup> Surely, an unusually touching constitutional argument! By a chain of thought equally ingenious he argued that the authority of Jones to negotiate a treaty of commerce in addition to the treaty of peace did not constitute a valid precedent, either.<sup>60</sup>

<sup>59</sup> Cong. Debates, 19 Cong. 1 Sess., II, 609.

<sup>60</sup> Ibid., 610.

Tazewell then came to the denouement which formed the climax of his speech. "*John Paul Jones never was appointed a minister to Algiers for any purpose.*"<sup>61</sup> He gave the history of the appointment. A prospect having opened for peace with Algiers, Washington as was his custom "(would to God, sir, it was the custom of the present President also!)" consulted the Senate, which advised a negotiation. Congress appropriated fifty thousand dollars. "At the time this transaction occurred, some reasons existed to apprehend, that, if the plan of the United States was known, some European Power would endeavor to embarrass its execution, and defeat its object. It was therefore kept a profound secret." Jefferson went so far as to write out the commissions with his own hand, and only President Washington, Jefferson, and Pinckney knew of the appointment. "Now the idea of a *secret Minister* was one much too absurd ever to have entered such a head as that of either Washington or Jefferson. Jones was never, therefore, appointed a 'Public Minister,' but a mere secret agent of the President; and is expressly styled in the instructions intended for him a 'Commissioner.'"<sup>62</sup>

In the course of his argument, Tazewell dealt, also, with the origin and nature of diplomatic office. Admitting that the offices of ministers were derived from international law through the Constitution, he argued that they were not in such effective existence that a

<sup>61</sup> Ibid.

<sup>62</sup> Ibid., 611.



vacancy could "happen" in a recess. Such a construction, he contended, would be analogous to declaring that since the Constitution had said that the President was to nominate judges of the Supreme Court, mentioning them specifically as it did ambassadors, the President could appoint justices to the Supreme Court, in a recess, even before the judiciary act.<sup>63</sup> This argument could hardly have been ingenuous. It is scarcely conceivable that he overlooked the distinction between diplomatic officers whose character, position, and functions were broadly defined by international law, and whose direction in all matters was intrusted to the President, and the justices of a court which Congress had been specifically given the power to organize, and whose duties and functions were to be exercised quite independently of the President.

Tazewell was regarded by John Quincy Adams as an unusually expert hair-splitter, and this discussion does a good deal to substantiate the judgment. His doctrine of precedents was framed for an occasion and did not fit the facts with which he was dealing. His insistence that there was a difference in constitutional power arising from a distinction between civilized peoples and savages cannot be read in the words of the Constitution to which at other times he was eager to cling. The bizarre argument that the President had power to make peace, not as the executive in charge of foreign affairs, but as commander in chief of the army, was absurd. His shocked assertion that Washington and

<sup>63</sup> Cong. Debates, 19 Cong. 1 Sess., II, 604-607.



Jefferson would never dream of a secret minister is belied by their Revolutionary experience. There was, of course, some truth in some of his observations. He was correct in asserting that Jones was not a minister but an executive agent, although it had no genuine relevance, for the Jones mission was undoubtedly initiated in a Senate recess.

On the other side of the argument the only well-reported speech is by Chambers. The more important argument by Mills, who talked to Adams and who preceded Tazewell, is missing. Chambers' speech was in reply to Tazewell. He had no difficulty in destroying the notion that the commander in chief, as such, had authority to make peace. He insisted upon the right of the President to institute missions during the Senate recess. But he was not without his misconceptions, for he spoke of an office "created by the commission" issued by the President.<sup>64</sup>

It is refreshing to turn from occasional references and debates on related topics to a discussion which dealt specifically and at length with executive agents. In 1831 there occurred a debate over the mission which concluded the treaty between the United States and Turkey. From the point of view of this study it is the ablest discussion of the matter. The question of office, the key to any informed discussion of executive agents, received a great deal of attention, and the several criteria of office were actively canvassed. As an exposition of congressional opinion regarding execu-

<sup>64</sup> Ibid., 628.

tive agents, this debate is by far the most significant in American history. From a broader constitutional point of view it ranks with the famous Spooner-Bacon debate of 1905 and 1906. The participants were notable figures. Livingston, of Louisiana, was to become the next Secretary of State, succeeding Van Buren in 1831. Forsyth, of Georgia, was also to serve for several years as Secretary of State for Jackson and Van Buren. Tyler, of Virginia, was the later President.

The discussion was as little political as such a discussion could possibly be. Beside the mission appointed by Jackson, another, precisely similar in every respect, had been appointed by Adams. Democrats, Tazewell and Tyler, of Virginia, led the assault, making a great play of consistency in so doing. Division in sentiment, therefore, was not along strict party lines. There were, very naturally, political aspects to the discussion, for Branch, Secretary of the Navy, and Van Buren, Secretary of State, and other members of the administration had participated in the Panama mission debate, these committing themselves by voice and vote and others by vote alone against the supposed claim of power on the part of Adams. Though the subjects of the two debates were by no means identical, they were regarded as very closely related, and it was presumed that the point of view maintained upon the earlier occasion would be supported upon this later one.<sup>65</sup> This debate, moreover, was over a fairly clear issue — the appointment of

<sup>65</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 238; see *ibid.*, 297.

commissioners plenipotentiary to make a treaty as executive agents. The only confusion resulted from the fact that the agents were commissioned in a recess. Hence the old question of the right of the President to institute a new mission in a Senate recess became involved in a discussion where it had no proper place. This confusion affected the discussion of precedents particularly.

The arguments in this debate, furthermore, started from common ground. There was no denial of the right of the President to use agents to facilitate his conduct of foreign relations. Argument was directed to definition and limitation of that admitted power. Tazewell said: "Let me not be misunderstood. I do not mean to doubt the power of the President to appoint secret agents when and how he pleases; nor do I mean to advance any claim on the part of the Senate to participate in the exercise of any such power. . . . But as a Senator, I do claim for the Senate, in the language of the Constitution, the right of advising and consenting to the appointment of any and every officer of the United States, no matter what may be his name, what his duties, or how he may be instructed to perform them. And it is only because secret agents are not officers of the United States, but the mere agents of the President, or of his Secretaries, or of his military and naval commanders, that I disclaim all participation in their appointment."<sup>66</sup> This was eminently sound. Tazewell was correct in reducing the

<sup>66</sup> Ibid., 233.

whole matter to a question of office. His standards of office, however, were such as made Rhind, Offley, and Biddle officers; hence his opposition to the manner of their appointment.

Livingston's statement showed much more grasp. "The laws of nations . . . make a distinction . . . between two classes of agents by whom diplomatic intercourse may be carried on; it distinguishes between public ministers and private agents. In the first are included ambassadors, envoys, ordinary and extraordinary, ministers resident, *chargés d'affaires*, consuls, etc. In the second class there can be no gradation of rank, but the powers may be as extensive as those given to any of the others. The power to make treaties . . . includes that of appointing agents as well of the one as of the other class. But the Constitution has placed a limitation on the power of appointing those of the first class; and having given none to that of the second, the President has it without restriction."<sup>67</sup> It is an admirable statement, so admirable that it requires little comment. Probably Livingston did not mean that in the second class—executive agents—there could be no assignment of rank, but only that there were no permanent and definite gradations of rank to which they must be assigned, standing in this respect in a wholly different position from public officers who must always be assigned to one of the recognized categories.<sup>68</sup> Accepting Livingston's statement in this

<sup>67</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 247-248; see *ibid.*, 250.

<sup>68</sup> Regulations of the congress of Vienna and that of Aix-la

sense, it stands as the clearest and soundest exposition of the position of executive agents as negotiators of treaties that we have anywhere. As a general statement it suffers only because of the circumstances of its utterance. Livingston was dealing with a specific case—the case of treaty-negotiating agents. Consequently, he did not state the power of the President in its broadest terms, resting it upon the general grant of executive powers, and conferring authority to use executive agents for any other sort of diplomatic business as well as treaties.

Forsyth, as usual, emphasized the practical bearing of the question. When Clay had threatened to become rampant, Forsyth had checked him by an adroit move. Now again, Forsyth, still not pretending to knowledge of legal subtleties, emphasized the practical side. "The experience of the Confederation having shown the necessity of secret confidential agencies in foreign countries, very early in the progress of the Federal Government, a fund was set apart, to be expended at the discretion of the President of the United States on his responsibility only, called the contingent fund of foreign intercourse. . . . It was given for all purposes to which a secret service fund should or could be applied for the public benefit. For spies, if the gentleman pleases;<sup>69</sup> for persons sent publicly and

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Chapelle named and formally determined the precedence of public diplomatic agents; any attempt to do likewise for private agents would be impossible.

<sup>69</sup> Tazewell had repeatedly used the word, and he practically assimilated his expression "secret agents" to spies.

secretly to search for important information, political or commercial; for agents to carry confidential instructions, written or verbal, to our foreign ministers, in negotiations where secrecy was the element of success; for agents to feel the pulse of foreign Governments, to ascertain if treaties, commercial or political, could be formed with them, and with power to form them if practicable."<sup>70</sup>

The passages quoted from Tazewell, Livingston, and Forsyth show the measure of common ground, and open windows into the minds of each, revealing the methods of each and the consequent results. Forsyth was unwilling to go into the constitutional phase; he found sufficient authority to use executive agents in the fact that Congress had by law provided a method of remuneration, clearly showing its intent that they should be used. The grant had been without restriction or limitation, freeing the President, in consequence, of any trammels in its use. Livingston found the constitutional power in "the express, unequivocal authority given to the President to make treaties. If under this power, he himself should make a treaty with a foreign minister, and submit it to the Senate, could it be objected to as being unconstitutionally negotiated? Surely not by those who contend for literal constructions. But no one has denied that he may do it also by others; must such others be ambassadors or public ministers? Where is the clause that restricts him to such agents? . . . Other grades are known and em-

<sup>70</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 295.



ployed under the title of secret agents. What tittle in the Constitution, what forced construction of any word it contains, can be made to show that he may not make choice of them when he deems it expedient? There is none. The power to make treaties is given, and with it the power to employ all proper means to effect it; secret agents are at times proper means, and therefore he may employ them; therefore, he must employ them whenever he thinks publicity would endanger the failure of his object.”<sup>71</sup>

Tazewell, alone of the three, did not rest the power of appointment upon a statute or on the Constitution. He simply asserted the right of the President to appoint persons not officers. A fourth point of view, but closely akin to that of Livingston, was set forth by Senator Brown. He rested the power of appointment not only upon the treaty-making power, but upon the broader power of the President to direct foreign affairs. By the Constitution, “the management of our foreign relations was peculiarly confided to the Executive Department of the Government. The power of appointing confidential agents to confer and treat with foreign nations . . . was fairly deducible from this duty imposed by the constitution on the President. It was unreasonable to suppose that, when a duty was required of an officer of the Government by the constitution, it withheld from him the power to employ the necessary means for its accomplishment.”<sup>72</sup>

<sup>71</sup> Ibid., 253.

<sup>72</sup> Ibid., 271.



Thus despite differences of approach there was common ground in the general agreement that the President could use executive agents. The fundamental question at issue was the question of office. What constituted office? When did an agent cease to be a properly appointed agent and become an improperly appointed officer? Tazewell held that this melancholy event transpired when the President signed his name and caused the broad seal of the United States to be affixed. "I beg the Senate to bear in mind that this authority was not conferred upon these persons by any private letter or warrant written by a Secretary, and intended for their own guidance and governance merely; but that it purports to be granted by the Chief Magistrate himself, is communicated to them by letters patent, under his own signature, authenticated by the great seal of the United States. . . . To whomsoever this seal was shown, it proved itself. When recognized by any sovereign, it entitled those who bore the commission it authenticated, to all the rights, privileges, and immunities accorded to the ministers of any potentate on earth; and authorized them to pledge the faith and honor of this nation to the performance of any act within the scope of the full power it purported to bestow."<sup>73</sup> "Whereas your secret agents in South America, your bearers of despatches or newspapers, *et id omne genus*, never had any commission—had no authority to pledge your faith—were never trusted with your great seal—and had not a single privilege

<sup>73</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 217-218.

anywhere, which any other individual citizen might not equally well claim. In short they were not officers of the United States, but the messengers (either special or general) of their officers." <sup>74</sup> This passage makes Tazewell's criteria of office so clear that no iterative enumeration is necessary.

One more comment of Tazewell's own, however, emphasizes the importance he attached to diplomatic privilege as a test of office. "It is this, at last, that constitutes the true test whereby to ascertain whether the agent appointed to negotiate a treaty is an officer of the United States, in virtue of such an appointment. For as the immunities conceded by the public law are official privileges, he who acquires none such in virtue of his appointment to negotiate a treaty, is not thereby made an officer. But wheresoever the appointment is designed to draw after it pay at home, and immunity abroad, then it creates office. Now such is the case of these commissioners." <sup>75</sup> Tyler, who supported Tazewell, set up a different standard. "It is the employment which gives character to the agent. If sent on a high embassy, involving the commercial interests of the country, whether his character be publicly known or not is wholly immaterial," he is an officer.

Livingston perceived the fallacies involved in these positions. "It seems to be thought that the nature and style of the mission is to be determined by the manner in which the powers are authenticated—not by the

<sup>74</sup> *Ibid.*, 233.

<sup>75</sup> *Ibid.*, 279-280.

character given in those powers. Sir, there are grades in diplomacy which give different rank and privileges—from an ambassador to a secret agent. The lowest of these may have, for the purpose of binding the party he represents, the same powers that are usually vested in the highest. A chargé d'affaires may be ordered to make a treaty, or to compliment a sovereign on his accession; but he is neither more nor less than a chargé d'affaires—so the same acts may be done by a secret agent having no public diplomatic character. . . . I should be glad to know in what manner a President is to signify to a foreign State his confidence in the agent he employs, or the powers with which he chooses to invest him, in any other manner than by his signature to those powers, and the addition of the seal of the United States, which authenticates it. To deny the use of these proofs of the commission given to such agents, is to say they shall not be employed, because they can transact no business with a foreign Power without the usual proofs of their mission. But . . . the use of the seal makes no difference in the nature of the mission. They are private agents for the transaction of the business of the Nation. . . . The commissioners to the Porte were such secret agents; their commission, though it gave them plenipotentiary powers for a national purpose, was a secret agency, and the President was under no necessity to nominate them to the Senate.”<sup>76</sup>

Livingston barely touched upon one of the prime

<sup>76</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 251-253.

tests of office when in distinguishing agents from officers he said agents were "specially authorized to perform a certain act."<sup>77</sup> This emphasis upon the transient character and narrow range was referred to, also, by Senator Brown, who pointed out that "they had been appointed for a special designated purpose, not clothed with the usual powers of public ministers."<sup>78</sup> This very important point, a point vital to the distinction which was sought to be made, was mentioned only in this brief and casual fashion. It did not have the attention it deserved.

Forsyth, characteristically, relied upon practice to establish a distinction which others sought chiefly elsewhere. "The distinction might not be sound; but one thing was certain, that it had always been made, and always had been and was now acted upon. Every head of a department occasionally employs and pays agents in the execution of the duties of his office, on the strength of the contingent fund submitted to his disbursement. We have consuls appointed under the Constitution, by and with the advice and consent of the Senate; commercial agents selected by the President with consular powers, about whose appointment the advice and consent of the Senate is never asked. We have agents or commissioners to make contracts, treaties they are called, with Indian tribes. These appointments were in the first days of the Government submitted to the Senate, but were soon made at the discre-

<sup>77</sup> Ibid., 252.

<sup>78</sup> Ibid., 271.

tion of the President or his Secretary of War, without even the ceremony of stating to the Senate that they had been made." <sup>79</sup> A practice that ran through every department of the government, which had existed from its inception, was constitutional interpretation of a kind that appealed to Forsyth as conclusive. The fact was that agents of this sort had been used many times before and had not been regarded as officers.

Forsyth was by no means the only one to appeal to precedent. Most of the participants in the discussion analyzed them with some care. It is not necessary to deal with Tazewell's argument about precedents. He appears to have gotten out the speech made at the time of the Panama mission debate, refurbished it somewhat, and thus let his funeral baked meats for Adams coldly furnish forth Jackson's wedding feast. He still objected to "that sort of argument, which, in a Government founded upon a written Constitution, seeks to infer authority for the governors from their own practices." <sup>80</sup> There were certain refinements in his argument; he seems to have recognized that it was asking a good deal to expect Senators to assimilate the treaty-negotiating with the war-making power, so he introduced an intermediate stage by saying the making of an armistice was part of the war-making power, and then asserting that the power to make an armistice and the right to negotiate a treaty were closely related. It was a refinement, but it was not valid argument.

<sup>79</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 297-298.

<sup>80</sup> *Ibid.*, 227.

Livingston's incisive logic swept away all such gingerbread constructions. His doctrine of precedents is precisely like that adopted by the Supreme Court on many occasions. "A uniform practice in conformity with any particular construction is always strong evidence that its first construction is correct; as applied to our Constitution, it is particularly persuasive, if it arose under the management of those who framed the instrument, and best knew its intent; and it becomes almost conclusive if the practice has been uninterrupted and unquestioned."<sup>81</sup> On this strong basis of principle he rested his argument from precedents. The circumstances of the case limited him to a discussion of precedents involving treaties. Another limitation in the precedents came from the irrelevant emphasis upon appointments during a recess, which had crept in. He cited certain cases before the Constitution went into effect.

The first case which he mentioned after 1789 was that of David Humphreys, minister to Portugal, who was appointed, March 30, 1795, commissioner to make peace with Algiers. He held a formal commission under the great seal and the sign manual of George Washington, and he was authorized, moreover, to appoint a deputy in case he could not himself perform the task. The fact that Humphreys at the time was minister to Portugal, Livingston asserted, had no bearing on the case. For the purposes of this negotiation Humphreys was not minister but commissioner, so

<sup>81</sup> *Ibid.*, 253.



named in the commission, and would have no standing in Algiers other than that of commissioner. He went on to cite the case of Joel Barlow as another illustration of the practice of Washington, that of O'Brien, Eaton, and Cathcart as indicative of John Adams's acquiescence in the construction which Washington had given. Proceeding in this manner he involved in the practice every President up to the days of Jackson.<sup>82</sup> "Now, sir, does not this uniform, this unquestioned practice, carried through every Presidency, from that of the father of his country to that of the present incumbent; is it not strongly persuasive of the correctness of that construction which gives the President the power to make treaties, whenever he may deem it expedient, by a special agent, instead of a public minister—to give full powers, under the great seal, to such special agent, and to omit nominating him to the Senate when he thinks proper?"<sup>83</sup>

In defining executive agents Livingston went further than almost anyone else in our history. He held that the Secretary of State when specially appointed to negotiate a treaty became a special agent just as truly as would a private citizen who was given a like appointment. "If, as Secretary of State, the duty could have been done, mere instructions would have sufficed—no commission would have been necessary. But in every instance commissions were delivered, in the same form, as to powers, that are used for min-

<sup>82</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 255 ff.

<sup>83</sup> *Ibid.*, 258.



isters going abroad. The President might have selected any other individual, and the case is as strongly in point as if he had.”<sup>84</sup> “But to put an end to all cavil on the ground that the appointment of the Secretary of State as a plenipotentiary was not to be governed by the same rules that apply to the appointment of other persons, let us suppose the strong case of a law declaring that, in all treaties with foreign Powers in the United States, the Secretary of State should be the person to make them; would the President’s constitutional right to make treaties and name agents to make them be affected by such a law? Could the Secretary of State, under it, without a special commission make a treaty? . . . The law cannot control the Constitution. The office of Secretary is created by the law of Congress—that of minister, by the law of nations. The appointment of one is regulated by law—that of the other, by the Constitution: therefore no law can control the powers of the President; . . . and the Secretary cannot be a minister, but by virtue of a special appointment. That special appointment has been uniformly given by the President, without, in a single instance, submitting it to the Senate; and the unquestioned practice proves that temporary appointments may rightfully be made without nominating them to the Senate.”<sup>85</sup>

Livingston’s argument on that point is absolutely sound. When Mr. Lansing was appointed a commis-

<sup>84</sup> Ibid.

<sup>85</sup> Ibid., 281-282.

sioner to negotiate peace in 1918, he was separately commissioned to a new employment. The only reasons that the cases of Secretaries of State are not dealt with elsewhere in this study are that the practice of using them as commissioners has been uniform and has never been called into question. A study in detail of the instances does not throw more light upon the practice of using other persons as executive agents. For these reasons this particular phase of the inquiry is dismissed with the acceptance of Livingston's masterly argument and this general statement.

Other arguments in this discussion are not worthy of extended notice. Senators Brown and Smith supported Livingston and Forsyth,<sup>86</sup> and Tyler followed Tazewell, pleading weakly, "Shall we consecrate abuse? Shall we plead precedent to justify error? Is the legislation of Congress or the action of the Executive Department above the Constitution? Shall the creature claim to control the creator? Pile precedent upon precedent until you make Ossa like a wart, and yet no sufficient justification is furnished for the Executive."<sup>87</sup>

The debate just discussed had been precipitated by Tazewell's motion<sup>88</sup> to strike from the general appropriation bill an item for the payment of Commodore Crane and David Offley, commissioners appointed by President Adams, and Charles Rhind, David Offley,

<sup>86</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 272, 308.

<sup>87</sup> *Ibid.*, 267.

<sup>88</sup> Feb. 18, 1831.

and Commodore Biddle, commissioners appointed by President Jackson to make a treaty with Turkey.<sup>89</sup> To Tazewell's motion, another Democrat, Kane, of Illinois, offered an amendment substituting for the part stricken out by Tazewell's proposal an item: "To the persons heretofore employed in our intercourse with the Sublime Porte, the further sum of \$15,000 in addition to the sum of \$25,000, appropriated for the contingent expenses of foreign intercourse." Tyler, a third Democrat, fearful that the matter might thus be settled without a vote on the question of principle, offered a proviso to Kane's amendment, as follows: "Provided always, that nothing in this act contained shall be construed as sanctioning or in any way approving, the appointment of these persons by the President alone, during the recess of the Senate, and without their advice and consent, as commissioners to negotiate a treaty with the Ottoman Porte."<sup>90</sup>

The votes on these measures are instructive. Kane's amendment carried, February 25, by a vote of 22 to 21. Tyler's proviso came to a vote on the same day and was adopted by a vote of 25 to 18. Tazewell thereupon withdrew his motion.<sup>91</sup> The next day efforts were made to soften the force of the proviso. Senator King moved a substitute proviso, somewhat more general in character, referring to all former administrations as well as those of Adams and Jackson. This was

<sup>89</sup> Cong. Debates, VII, 213.

<sup>90</sup> *Ibid.*, 270.

<sup>91</sup> *Ibid.*, 310.

defeated 23 to 19. Bibb then moved to reconsider and strike out the proviso, but upon Tyler's disclaimer of "any intention of giving it a particular application to the President," Bibb's motion was lost 25 to 17.<sup>92</sup> When the matter came to the House, where discipline was better and where sensibilities were not so keen, Tyler's proviso was thrown out,<sup>93</sup> and Kane's amendment retained.<sup>94</sup> In the conference committee there were three Senators, Tazewell, Webster, and King,<sup>95</sup> all of whom had voted for Tyler's proviso, though King had led a move to reconsider and soften its force. There were five members from the House of whom three had voted against the proviso.<sup>96</sup> The result was a compromise which practically took the form of Kane's amendment, and the bill as passed and approved contained the item: "For the contingent expenses of foreign intercourse; in addition to the sum of twenty-five thousand dollars appropriated, the sum of fifteen thousand dollars."<sup>97</sup> The upshot was, therefore, that the bill as it came before the President for his approval contained nothing objectionable to him. But the Senate had expressed an opinion.

For the first time the Senate had passed a motion disapproving the practice of employing executive

<sup>92</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 319.

<sup>93</sup> In committee of the whole by a vote of 100 to 62; in the House by vote of 83 to 57. *Ibid.*, 838.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*, 329.

<sup>96</sup> *Ibid.*, 845.

<sup>97</sup> *Ibid.*, App., 33.

agents in the conduct of foreign relations. It is not possible fully to explain the vote, but a number of partial explanations suggest themselves. Tazewell was said by J. A. Hamilton to be disgruntled at not having been made Secretary of State. Without putting too much reliance on that assertion, it is clear that Tazewell and Tyler had no love for Van Buren, and were disposed to follow Calhoun in the factional fight that had broken out in the Democratic party. That factional spirit brought on many other difficulties between Jackson and the Senate, as, for example, the censure which Benton labored so hard to have expunged. There was not at this moment, therefore, harmony or discipline in the Democratic majority of the Senate, and many broke over the lines to follow Tazewell and Tyler. Both these men had a penchant for consistency, which in the case of Tyler amounted almost to a passion. This trait must not be lost to sight. Political motives they unquestionably had, but Tazewell had been very deeply committed in a previous debate, and in this case his old enemy, Adams, was as much under fire as Van Buren.

The Whigs saw in the episode an opportunity to make capital against the Democrats. It is true that Adams was almost equally under fire; but Adams at this moment was not a dominant political figure, he was not supposed to be a man with a great political future, and Whig Senators were not likely to go far out of their way to shield Adams if by so doing they would lose a chance to strike at Jackson. In the vote

against Tyler's proviso only one or two Whigs are to be found. The minority was made up of Jackson Democrats. The majority included practically all the Whigs, and such Democrats as from principle, friendship for Calhoun, or hostility to Van Buren or Crawford, might be won over.

John Quincy Adams was by no means a passive observer. He remarked bitterly upon the strange bedfellows of politics: "The blow is against me, as well as against Jackson, and it is struck by those who were my friends, putting themselves under the lead of Tazewell, one of the bitterest enemies I have in the world."<sup>98</sup> Adams's constitutional notions on the matter were somewhat confused. He was led up a blind alley by Tazewell's emphasis upon the institution of the mission during a recess, a question quite apart from the power of appointment. Moreover, he said, "I constituted the mission during the recess."<sup>99</sup> But no despatch was received by the commissioners until after I was out of office; and they had not concluded the negotiation."<sup>100</sup> This statement is wrong in point of fact, for the commissioners had received Adams's instructions by December, 1828.<sup>101</sup> It is possible Adams meant to write that no despatches had been received from the commissioners. But in any case these facts are quite irrelevant. The Constitution does

<sup>98</sup> J. Q. Adams, *Memoirs*, VIII, 329.

<sup>99</sup> July 21, 1828.

<sup>100</sup> J. Q. Adams, *Memoirs*, VIII, 287.

<sup>101</sup> MS. *Negotiations with Turkey*, I, 94.

not provide for nomination to the Senate after the appointees have received their instructions but during the next succeeding session after appointment. That Adams was confused appears in his reference to Jackson's action. "Jackson issued another commission during the recess, and they concluded a treaty, which he sends to the Senate without sending at the same time a nomination of the Commissioners, *as he ought to have done.*" <sup>102</sup> A whole session of the Senate and an adjournment had intervened between the appointment and the sending in of the treaty. If the nominations were ever to have been sent in, they should have been sent to the Senate at the next succeeding session after appointment. Quite apart from the constitutional question there is a palpable absurdity in sending in nominations for confirmation after all the work under the appointment is complete.

On another point, however, Adams was perfectly clear. Tyler's proviso "is to be sent in the General Appropriation bill to the President to approve, and thereby sanction censure upon himself for a violation of the Constitution. . . . I told Lawrence that I did not know what Jackson would do with the bill, but that if such a one had been presented to me at the last quarter of an hour of an expiring Congress, I would have sent it back with my reasons, and refused to sign it." Adams felt the proviso was "not only ingracious and insulting to me, but in the highest degree pernicious as a precedent." Feeling thus, when he was informed

<sup>102</sup> J. Q. Adams, *Memoirs*, VII, 287. *Italics mine.*



that the proviso would pass the House of Representatives by a majority of thirty, with all the friends of his administration joining the deserters from Jackson, he used his utmost endeavors to change the course of events. Either the prophets were wrong or his labors with Lawrence, Pearce, Bailey, Everett, and others had a decisive effect in the defeat of the proviso.<sup>103</sup>

It is very striking that after so close a battle, one in which neither side could claim a victory, the discussion should cease and no remark at all be made on the occasion of the extraordinary mission of Edmund Roberts, or any of the other agents of the Jackson régime. There is no evidence whatsoever that it affected executive practice in the least for a number of years. When, however, Van Buren sent James C. Pickett, chargé to Peru, to Ecuador to make a treaty, he sent a message to the Senate, June 8, 1838, informing them of the fact. "I make this communication to the Senate that an opportunity may be afforded for the expression of an opinion, if it shall be deemed necessary, on the exercise of such a power by the Executive without applying to the Senate for its approbation and consent. In debate it has sometimes been asserted that this power, frequently exercised without question or complaint, and leading to no practical evil, as no arrangement made under such circumstances can be made obligatory upon the United States without being submitted to the approbation of the Senate, is an encroachment upon its rightful authority. It appears to have been

<sup>103</sup> J. Q. Adams, *Memoirs*, VIII, 329-330.

considered that the annual appropriation of a gross sum for the expenses of foreign intercourse is intended, among other objects, to provide for the cost of such agencies, and that the authority granted is the same as that frequently given to the Secretary of State to form treaties with the representatives or agents of foreign governments, upon the granting of which the Senate has never been consulted. Desiring in this and in all other instances to act with the most cautious respect to the claims of other branches of the Government, I bring this subject to the notice of the Senate that if it shall be deemed proper to raise any question, it may be discussed and decided before and not after the power shall have been exercised.”<sup>104</sup>

This message is very difficult to explain. Pickett was not the first treaty negotiator sent by Van Buren without the approbation of the Senate. Indeed, in the preceding month Nathaniel Niles had been instructed and empowered to make a treaty with Sardinia without any notice having been given to the Senate. Why, after so many years of quiet on the topic, why, after he had made use of such agencies before, Van Buren should pitch upon this occasion for such a message is a mystery. It is the more puzzling because there had never been any complaint at the use of a person in the diplomatic service to make a treaty with a country other than that to which he was regularly accredited. The only complaints had come when a man was taken from private life, or when a new mission was instituted

<sup>104</sup> Richardson, Messages and Papers, III, 477-478.

in a recess. It is possible that Van Buren, with the deliberate notion of gaining the consent of the Senate to a precedent, purposely selected a case where the arguments in opposition would be weakest. That, however, is merely conjecture. Equally interesting is the fact that the Senate made no gesture of any kind. Tazewell and Tyler were gone. There was no one who had this subject peculiarly upon his heart; there was no political capital to be made of an act which was not done. The matter went to the committee on foreign relations and there it slumbered.<sup>105</sup> Pickett went to Ecuador and signed a treaty, June 13, 1839, describing his status as "a citizen" of the United States.<sup>106</sup>

The next discussion, a brief one, occurred in 1842. Webster, who had voted in favor of Tyler's proviso, was now the object of the attack. Woodbury, a member of Jackson's administration at the time of the debate on the Turkish mission, was now making the assault. Tyler, who had moved the original censure, was now President. In such a setting it would be difficult to take the debate very seriously. The pretext for the discussion was an amendment to the general appropriation bill to the effect "that no part of this appropriation be applied, after the 1st of July next, to the payment of special agents abroad, appointed without the consent of the Senate or any act of Congress authorizing it; nor for compensation to separate agents appointed in either of those modes for receiving and

<sup>105</sup> Sen. Ex. Jol., V, 120.

<sup>106</sup> Malloy, *Treaties*, I, 421.

transmitting despatches.”<sup>107</sup> Ammunition was drawn from a report submitted by Webster in response to a Senate resolution of inquiry as to the number and names of agents employed by the Department of State without express provision of law. This report had listed despatch agents at Liverpool, New York, and Boston receiving an annual salary from the contingent fund; it had also mentioned “William S. Murphy, employed as special agent to Central America, since the 28th day of July, 1841.”<sup>108</sup>

Woodbury particularly objected to the despatch agents who performed a continuous duty and drew an annual salary; he felt that such posts were of a character for which regular provision should be made by law, and that the men should be regularly nominated to the Senate. In this contention he was undoubtedly correct. The new practice had grown up quite naturally, and not improperly; but since it seemed likely to become a permanent scheme, some regular statutory provision was desirable. But “he thought, also, that a permanent diplomatic agent abroad, like one to Central America, named in that report, appointed since the 4th of March, 1841, and not nominated to the Senate yet, should not be sanctioned.” “Occasional temporary contingent employments were at times necessary and were not affected by this proposition.”<sup>109</sup>

Everything hinged on the definition of temporary.

<sup>107</sup> Cong. Globe, 27 Cong. 2 Sess., 469.

<sup>108</sup> Serial 398, 27 Cong. 2 Sess., Sen. Doc. 253.

<sup>109</sup> Cong. Globe, 27 Cong. 2 Sess., 469.

Woodbury was for giving it a strict construction. This comes almost humorously from the man who had been the chief sponsor for the mission of Edmund Roberts—one of the cases of longest continuous employment in the whole history of the use of executive agents. He was not confused into thinking Murphy held a regular appointment, for he said specifically, "As to Mr. Murphy, he had not supposed it was to be a permanent appointment, but it was the principle of making such an appointment without the consent of the Senate—lasting nearly a year, and still going on, and the salary in any amount to suit the Executive."<sup>110</sup> Calhoun supported Woodbury briefly. Tappan, of Ohio, whose son had held a special agency lasting over a year, also supported him, asserting that "he could point out a long list of paupers quartered on the contingent fund by the present Administration, of no use to the Government, but merely to sustain them. He alluded particularly to one person sent to Central America."<sup>111</sup>

Crittenden, of Kentucky, took Forsyth's rôle—and almost his language. He "did not know whether there was any authority for sending out ministers to such places as Central America; but if there was law for sending Mr. Stevens<sup>112</sup> there under the late administration, to hunt for a Government, there was as much law under the present Administration for sending the person alluded to."<sup>113</sup> Preston, of Maine, and

<sup>110</sup> Cong. Globe, 27 Cong. 2 Sess., 473.

<sup>111</sup> Murphy. Ibid., 469.

<sup>112</sup> John L. Stephens.

<sup>113</sup> Cong. Globe, 27 Cong. 2 Sess., 469.

Buchanan came to the defense of the practice. Granting that there had been abuse of the contingent fund, Preston "contended that it was necessary to send special agents to such places as Central America, if for no other purpose, for the purpose of deriving information as to the existing state of things, with a view to ascertaining how the interests of the United States may be affected or promoted thereby."<sup>114</sup> Buchanan, a Democrat, made the only really sincere statement on the question.

He admitted at once that the despatch agents should be provided for by law rather than from the contingent fund. The part of the amendment to which he objected was the first, "the effect of which was to deprive the Government of the power of appointing special diplomatic agents whenever it may become necessary to do so. There was no Government on the face of the earth that had not secret agents abroad unless it were our own. It might become necessary very shortly—though he did not know whether he ought to allude to the fact—to send an agent to the island of Cuba, and one to St. Domingo; and in such a case, to have a nomination made and confirmed by the Senate, according to the ordinary method of appointing diplomatic agents, would defeat the very purpose of the appointment, because the necessary secrecy would not be preserved. . . . This amendment would deprive the Executive of this power, so essential to the interests of any country that no government on the face of

<sup>114</sup> Ibid., 473.



the earth was destitute of it. . . . I admit that such discretion may be abused ; that it has been abused. But the question is can we take it away altogether?" <sup>115</sup> He recounted the manner in which his despatches were tampered with until the American eagle, put upon them in Washington, "became a most miserable turkey buzzard." Buchanan carried the day. Woodbury's amendment was defeated, 25 to 15, and Buchanan's substitute, which took regular despatch agents, but not special agents, off the contingent fund, was agreed to, 21 to 18.<sup>116</sup>

<sup>115</sup> Cong. Globe, 27 Cong. 2 Sess., 473.

<sup>116</sup> *Ibid.*, 475.

Later the same issue was raised concerning a bill prohibiting the appointment of executive agents. Secretary of State Seward wrote Charles Sumner, chairman of the committee on foreign relations, January 28, 1868: "It is to be hoped that the Bill which, it is understood, has been introduced in the Senate, prohibiting the appointment of Special Agents as may now be employed is not intended to apply to agents of that character in connection with foreign affairs. If it were to embrace them, it would not only create great embarrassment in the management of those affairs, but would often make the transaction of important public business impracticable. Special agents for foreign affairs have been, more or less, employed by every administration, from that of Washington, to the present time. . . . The occasion for such agents cannot be anticipated. They often depend upon emergencies which may suddenly arise and require an appointment not only prompt, but one where the fact of the appointment and the name of the person appointed must not, if success is to be expected, be made public. Special Agents in connection with foreign affairs are usually regarded as officers under the law of nations. They are employed by all governments. Though not especially authorized by any act of Congress, their employment has always been indirectly sanctioned for from the



When Polk was elected and the Democrats had full control of the government, an effort was made to stir the dry bones of Webster's incumbency of the Department of State. The House of Representatives requested the President, April 9, 1846, "to cause to be furnished to that House an account of all payments made on President's certificate from the fund appropriated by law, through the agency of the State Department, for the contingent expenses of foreign intercourse, from the 4th of March, 1841, until the retirement of Daniel Webster from the Department of State; with copies of all entries, receipts, letters, vouchers, memorandums, or other evidence of such payments; to whom paid, for what, and particularly all concerning the northeastern boundary dispute with Great Britain."

Polk, in a carefully considered message of April 20, declined to furnish the data requested. He did reveal the fact that the total amount paid during the period upon the President's certificate was \$5,560. He argued that the law creating the contingent fund had made the President who approved the expenditure the sole judge of the propriety of keeping the purpose and the items secret. The law, he contended, left no appeal from the discretion of the President. If this call were

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formation of the Government, there has been an annual appropriation for the contingent expenses of Foreign Intercourse, from which appropriation the compensation and expenses of such agents are paid. . . . Some of the most important treaties of the United States have been concluded by Special Agents and could not have been negotiated by any other officer." MS. Report Book, IX, 387.

answered, all previous payments under all administrations would be liable to publicity. "To break the seal of confidence imposed by the law and heretofore uniformly preserved, would be subversive of the very purpose for which the law was enacted, and might be productive of the most disastrous consequences. The expenditures of this confidential character, it is believed, were never before sought to be made public, and I should greatly apprehend the consequences of establishing a precedent which would render such disclosures hereafter inevitable." Polk pointed out that this was the only case where the law provided that expenditures need not be accounted for specifically, and he felt that such an outstanding exception must have been made purposely.

He stated that in his year of incumbency he had not signed any presidential certificates, but he foresaw that he might do so, for "the experience of every nation on earth has demonstrated that emergencies may arise in which it becomes absolutely necessary for the public safety or the public good to make expenditures the very object of which would be defeated by publicity." Prophetic of his own experience was the remark, "In time of war, or impending danger, the situation of the country may make it necessary to employ individuals for the purpose of obtaining information or rendering other important services, who could never be prevailed upon to act if they entertained the least apprehension that their names or their agency, would, in any con-

tingency be divulged.”<sup>117</sup> To this sound and statesmanlike utterance there could be no plausible rejoinder. The incident was closed, and for many years the question of executive agents was not again under discussion.<sup>118</sup>

It was not, indeed, until 1870 that another debate involving special agents took place. In his message of December 5, 1870, President Grant recommended that by joint resolution “the executive be authorized to appoint a commission to negotiate a treaty with the authorities of San Domingo for the acquisition of that Island.”<sup>119</sup> This request was a piece of political strategy. Grant had already had one treaty negotiated without first consulting the Senate. It is true that he had not felt free to have the negotiator of the treaty, General O. E. Babcock, sign it, but he had no qualms in authorizing the commercial agent, Perry, to sign. So Grant was not under the impression that he could not negotiate a treaty without the consent of the

<sup>117</sup> Serial 485, Doc. 187, 1-5; see also *Diary of James K. Polk During His Presidency, 1845-1849*, ed. M. M. Quaife (Chicago, 1910), I, 328-336.

<sup>118</sup> It is true that upon the return of Trist, the Senate foreign relations committee considered reporting unfavorably upon the treaty because of the fact that it had been negotiated after Trist's powers were withdrawn. G. L. Rives (*The United States and Mexico, 1821-1848* [New York, 1913], II, 631, n. 1) says, “More probably the committee objected because Trist had not been duly nominated and confirmed by the Senate—thus wounding the susceptibilities of that invariably jealous body.” But there is no evidence whatever to support this conjecture.

<sup>119</sup> Richardson, *Messages and Papers*, VII, 100.

Senate. The fact was that the treaty negotiated by Babcock had failed to gain the approval of the Senate, but a majority of the Senate had favored it. Grant desired that a majority of the Senate and of the House should go on record in favor of the negotiation. That would give the new treaty a strong moral position, and if the treaty failed, action could be taken by joint resolution, as had been done in the case of Texas.

Two resolutions were introduced in the Senate: the first that of Sumner, the second that of Morton on behalf of the administration. Sumner, chairman of the foreign relations committee, had broken with Grant and Fish over the Santo Domingo treaty. His resolution, introduced December 9, was a call for the correspondence and papers before, during, and after the previous negotiation.<sup>120</sup> Morton's resolution, introduced December 12, did not provide all Grant had requested. It simply authorized the President to appoint three commissioners to proceed to Santo Domingo to ascertain and report upon the facts pertinent to the question of the desirability of annexing the Dominican Republic.<sup>121</sup> These two resolutions were debated practically together. Sumner sounded the keynote of the discussion with the fantastic pronouncement that Morton's resolution "commits Congress to a dance of blood."<sup>122</sup> From that extravagant statement he went forward to one extraordinary proposition after another. Conkling

<sup>120</sup> Cong. Globe, 41 Cong. 3 Sess., 51.

<sup>121</sup> Ibid., 53.

<sup>122</sup> Ibid., 226-227.

said of the speech that Sumner spent most of the time splitting a hair and the rest in guessing which half was the biggest. Some of Sumner's propositions were fundamentally sound. It was true that the resolution was designed to secure some evidence of congressional approval to the project of annexation. But that was far from committing Congress to "a dance of blood." It was true that the resolution was unnecessary, that the President could send a commission without the authorization. But his arguments in support of sound propositions were extravagant, the tone heated, and the whole seemed a very bitter assault upon Grant. It brought passionate rejoinders. The ten Democrats sat by while the Republican majority quarreled bitterly.

A factional fight is not conducive to great constitutional argument, and what was said on this occasion with regard to executive agents suffered in consequence. Sumner, for example, made an elaborate argument out of the fact that in the famous Gautier-Babcock protocol Babcock had been described as "aid-de-camp" of the President. Admitting at once that Grant could send Babcock as special agent, which title the protocol had also employed, Sumner declared that neither the Constitution, laws, or precedents justified the title "aid-de-camp."<sup>123</sup> It was all nonsense and his opponents hooted at the idea and at his calling Babcock "aid-de-kong."<sup>124</sup>

<sup>123</sup> Ibid., 227-228; Sumner, Works, XIV, 99-102.

<sup>124</sup> Cong. Globe, 41 Cong. 3 Sess., 245.

There were, however, some instances of reasoned opinion which are pertinent. Sumner held that the resolution was unnecessary. He cited precedents—the cases of Poinsett, Scott, Bland, Rodney, Graham, Prevost, and Forbes—to prove that the President could send a commission of inquiry upon his own responsibility. “The President has all the power this pretends to give. He may, if he sees fit, appoint agents, calling them any name that he pleases, calling them commissioners; calling them ambassadors, perhaps, if he will, though this might raise a constitutional question;<sup>125</sup> but he may appoint agents to any extent, of any number, to visit this island and report to him with regard to its condition. He may give in charge to his agent all the matters specially named in this resolution. All these he may write in their commission; and when they return he may, as was done in other days, communicate their report to Congress.”<sup>126</sup> Just before the quoted passage he spoke of such men as “agents of an informal character, *informally* called commissioners.”<sup>127</sup> In all this Sumner was undoubtedly sound. He was, indeed, the first to suggest that the President might call such agents by any title he chose, even ambassador. His further argument that to “authorize” such appointments by joint resolution would change the agents to

<sup>125</sup> This was somewhat modified, when published in his “Works,” to read, “calling them by any name that he pleases, calling them commissioners or anything else.” Sumner, Works, XIV, 98.

<sup>126</sup> Cong. Globe, 41 Cong. 3 Sess., 227.

<sup>127</sup> Italics mine.



officers and require nominations to be sent to the Senate is not equally convincing. Indeed, it has since been determined upon elaborate inquiry that creation of the employment by Congress, and appointment by the President, either with or without approval of the Senate, does not necessarily create an office. Sumner's further contention that to name them commissioners by joint resolution brought them within the purview of the act of 1856 regulating the diplomatic service was far fetched and not convincing at all.

A second point of interest in this debate was a discussion concerning the use of members of Congress as commissioners. The practice of using them in that capacity did not come into currency until a later period. The discussion in this instance, therefore, was upon the abstract merits of the proposition. Senator Morton, of Indiana, was said to have suggested that army officers might be employed as commissioners. He denied that, saying he had mentioned members of Congress. Both Sumner and Thurman blurted out, "That is worse." Thurman made fun of the proposition to employ members of Congress, asserting that there were not proper persons in Congress, who were not already committed, or who could give the time from their legislative duties.<sup>128</sup> Scott, of Pennsylvania, approached the matter more seriously. "If this commission is not an office within the meaning of the Constitution of the United States, created during the term of the present members, it is the next thing to it. If it were an office

<sup>128</sup> Cong. Globe, 41 Cong. 3 Sess., 193.



technically, within the language of the Constitution, then no member of Congress could be appointed to it. I do not stop to discuss the question whether it is or not, but all the reasons which would be operative to prevent the appointment of a member of Congress during his term ought to prevail to prevent his appointment upon this commission."<sup>129</sup> The Senate talked all night, adjourning after six o'clock in the morning, but it is unfortunate that Senator Scott did not keep them a few moments longer to discuss the legal phases of this matter. He did take time to go into other reasons why members of Congress should not be members of the commission. It was, therefore, probably the practical rather than the legal considerations which led him to introduce an amendment providing that members of Congress should not be appointed. Certainly debate on the amendment dealt not at all with the legal point.<sup>130</sup>

Conkling also discussed the use of members of Congress upon the proposed commission. He contended that since no compensation was provided, the appointment of members of Congress was proper. He said, further, that if the provision were inserted requiring nomination to the Senate, members of Congress could not serve, because "it would be said that an office had been created." He cited as a precedent a case which he thought occurred in the administration of Van Buren, "in which a member of this body was sent as

<sup>129</sup> Cong. Globe, 41 Cong. 3 Sess., 193.

<sup>130</sup> Ibid., 259-260. The amendment was lost, 16 to 28.

a commissioner to a northwestern state for an important purpose.”<sup>131</sup> Others, who did not discuss the legality of Senators or Congressmen serving, did enter into the broader question of office. It has been remarked already that Sumner held that the passage of the resolution would create offices. In the passage just discussed, Conkling said nominating them to the Senate would “be said” to have made them officers. But the argument of greatest interest is that of Bayard, because later, as Secretary of State for Cleveland, he made free use of special agents and was violently attacked for so doing.

He claimed that the resolution provided for “three ambassadors. I care not if it is sought to disguise their real character by terming them ‘commissioners.’ . . . This is the substance of this resolution.” He went on to describe their duties, emphasizing that in character and in amount their responsibilities were properly comparable to those of ambassadors. “Looking at the substantial character of the duties to be executed by these three commissioners, who will doubt that it was to such a class of officers that confirmation by the Senate was made necessary for their proper appointment?”<sup>132</sup> Having moved to require nomination to the Senate,<sup>133</sup> Bayard developed his ideas further. “The duty, then, of this commission, as the President terms it, is to negotiate a treaty with some

<sup>131</sup> Ibid., 246.

<sup>132</sup> Ibid., 225-226.

<sup>133</sup> Ibid., 255.

foreign Government. By what name would you term the negotiators . . . with a foreign country? If they be not ministers to a foreign country, ambassadors, then I fail to understand the meaning of words; and if they be ambassadors or ministers to a foreign country, as plainly they are intended to be by this resolution, then the Constitution of the United States requires that they shall be appointed by and with the advice and consent of the Senate.”<sup>134</sup>

Earlier in the debate Morton had expressed his willingness to insert a clause to the effect that the men should be nominated to the Senate, as he felt it to be a matter of no great importance. The course of the debate, however, led him to oppose any change which might be construed to appear as though the Senate did not fully trust Grant. He now opposed Bayard's amendment, therefore, feeling that it might be interpreted as evidence of a lack of confidence in the President's fairness. The vote, consequently, was not upon the merits of the question; it was made into a vote of confidence in Grant. Hence, the defeat of the amendment, 33 to 10, does not give a genuine basis for gauging the sentiment of the Senate on this point. There were various other statements,—as for example, Morton's declaration that the President could not appoint such a commission without special authorization,<sup>135</sup>—but for the most part they are bald declarations unsupported by precedent or reasoned discussion,

<sup>134</sup> Cong. Globe, 41 Cong. 3 Sess., 256.

<sup>135</sup> Ibid., 237.

and are not, in consequence, worthy of extended analysis.

Perhaps a better test of congressional sentiment may be found in the discussion over a claim of Nicholas P. Trist. He presented a claim, March 7, 1870, for the balance due on account of salary, outfit, and return allowance as commissioner to Mexico to negotiate the treaty of peace in 1847 and 1848. Polk had not allowed all Trist thought fair. Sumner reported for the foreign relations committee, February 14, 1871, in favor of paying Trist \$14,519.90. This was a case where no political capital was to be made, and the discussion was almost solely upon the merits. There was scarcely a hint that the President lacked authority to appoint and empower Trist. Both the Senate and House, though the fact was brought out that he was not nominated to the Senate, took it for granted that such nomination was not required. The claim was approved by the Senate, and, with some amendment, by the House. It is a striking illustration of the fact that when such appointments are dissociated from politics no protest is raised.<sup>136</sup>

The next episode is one concerning which no debate is recorded. Commodore R. W. Shufeldt concluded a treaty with Corea, May 22, 1882, in accordance with instructions from Secretary of State Blaine and full powers granted by President Garfield. This treaty was sent to the Senate, July 29, 1882, and referred,

<sup>136</sup> Ibid., 1212, 1217; *ibid.*, 42 Cong. 1 Sess., 743, 809.

August 9, to the foreign relations committee. There ensued a six months' hiatus. Senator Windom, of Minnesota, reported favorably upon the treaty in behalf of the committee January 9, 1883. At the same time he submitted a series of resolutions, five in number. The first conveyed the Senate's advice and consent to the ratification, the second and third had to do with the interpretation of a certain clause. The fourth read, "Resolved, further, that the Senate in advising and consenting to the treaty mentioned in the foregoing resolutions does not admit or acquiesce in any right or constitutional power in the President to authorize or employ any person to negotiate treaties or carry on diplomatic negotiations with any foreign power unless such person shall have been appointed for such purpose or clothed with such power by and with the advice and consent of the Senate, except in the case of a Secretary of State or a diplomatic officer appointed by the President to fill a vacancy occurring during a recess of the Senate, and it makes the declaration in order that the means employed in the negotiation of said treaty be not drawn into a precedent." The fifth resolution provided for the communication of the preceding four to the President.<sup>137</sup>

Here, at last, almost a hundred years after the practice had started, the Senate succeeded for the first time in entering a formal protest, and to the end that the means employed "be not drawn into a precedent"! It appears to have been either an astonishing piece of

<sup>137</sup> Sen. Ex. Jol., XXIII, 584-585.

naïveté or an assumption that the President and Secretary of State knew nothing. The resolution was very poorly drafted. If it meant precisely what it said, it forbade not only the use of special agents; it also forbade the President to empower a regular diplomatic officer to make a treaty without first securing the advice and consent of the Senate, except in the case of a power conferred upon the Secretary of State, or a diplomatic officer appointed during a Senate recess. It is difficult to believe it was intended to mean that, for it would have been a revolutionary proposition. It is absurd enough to see the Senate in 1883 protesting against the making of a treaty by an executive agent lest it be drawn into a precedent; it is almost beyond belief that the Senate should intend to demand that its consent be asked before the negotiation of any treaty unless the Secretary of State or a recess appointee should be commissioned to do the work. More probably the Senators regarded a diplomatic officer as having among his regular duties the negotiation of treaties and they meant to say that the President could not instruct anyone save a diplomatic officer to engage in negotiation. But even if this was the case, it showed a complete misapprehension of the facts. It is astonishing if the members of the foreign relations committee did not know that a regularly appointed diplomatic officer has no power to sign a treaty and cannot sign one on mere instructions but must have a separate power to affix his signature.



There are other features of this resolution almost equally extraordinary. The committee reported, these resolutions were discussed and voted, and several other items of executive business were despatched—all in a session lasting only forty-six minutes. How thoroughly this matter was discussed in committee it is impossible to say. But it is apparent that it was scarcely discussed at all in the Senate. All five resolutions were dealt with as one, and everyone who voted for the treaty voted for the appendant resolutions also. To vote against the fourth resolution was to vote against the treaty. This incident has some importance because it is the first occasion on which a protest against the use of executive agents was successfully sent to the President and permanently embodied in the records. But in view of the circumstances which have been set forth, its significance is whittled down considerably. Certain it is that it created no commotion. It was not published in the papers, or elsewhere, and President Arthur and Secretary Frelinghuysen ignored it. It would have been proper for the executive to reply, asserting the rights of the President. But Frelinghuysen was not likely to take up the cudgels in behalf of anything Blaine had done, and Arthur was not the type of man who would see the somewhat abstract matter of principle involved and engage in a tilt with the Senate over it.

There is not the slightest evidence that it affected practice in the least. The only persons taken from private life to negotiate a treaty during Arthur's presi-



dency were U. S. Grant and W. H. Trescot, who negotiated a treaty with Mexico. But they were nominated to and confirmed by the Senate six months before this episode.<sup>138</sup> No regular diplomatic officer was nominated to the Senate before being empowered to negotiate a treaty. In one case it is clear that Arthur traversed the principle laid down by the Senate. A treaty of November 16, 1884, was concluded by N. D. Comanos, vice consul general to Egypt.<sup>139</sup> He was never nominated to the Senate either as vice-consul general or as a commissioner to negotiate this treaty. By no stretch of meaning could it be said, in the language of the resolution, that Comanos "had been appointed for such purpose, or clothed with such power, by and with the advice and consent of the Senate." Yet this treaty was approved by the Senate by unanimous vote.<sup>140</sup> The net result, therefore, is a resolution, founded in misconceptions, poorly drafted, passed with little or no consideration, ignored by the President who neither made reply nor altered his practice, and the principle of which was abandoned by unanimous consent on the next occasion for its assertion. It would be difficult to find a solemn vote of the Senate that meant less or had less effect.

The next discussion of executive agents occurred in the course of debate over giving the approval of the Senate to the fisheries treaty, negotiated by the Bay-

<sup>138</sup> Sen. Ex. Jol., XXIII, 520, 521.

<sup>139</sup> Malloy, *Treaties*, I, 442.

<sup>140</sup> March, 1885, Sen. Ex. Jol., XXV, 14.

ard-Chamberlain commission, and signed February 15, 1888. In order to put the discussion in its proper setting it is necessary to carry the account back to 1885. In December of that year, in his annual message, President Cleveland referred to the difficulties arising from the treaty of 1818, and the desirability of some adjustment. He recommended, therefore, "that the Congress provide for the appointment of a commission, in which the Governments of the United States and Great Britain shall be respectively represented, charged with the consideration and settlement upon a just, equitable and honorable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America."<sup>141</sup> The language seems plain enough, yet, as the event showed, it was capable of honest misinterpretation.

The response to that recommendation was a resolution introduced into the Senate, January 18, 1886, which recited the recommendation and proceeded as follows: "Whereas 'the fishing rights' were settled for ten years by a commission appointed under the Treaty of Washington at a cost of \$5,500,000 paid in money and a remission of duties amounting to about \$6,000,000 more; and whereas the effect of the terms there agreed upon was further an increase in the Canadian fishing fleet of five hundred vessels and of ten thousand seamen, with a corresponding decrease in our own fleet and sailors, without any appreciable benefits

<sup>141</sup> Richardson, Messages and Papers, VIII, 332.

to the people of the United States: Therefore, be it resolved by the Senate of the United States, that in the opinion of the Senate, the appointment of a commission clothed with such powers ought not to be provided for by Congress.”<sup>142</sup>

It was necessary to quote both the message and the resolution, which was offered by Senator Frye, to make clear the fact that the resolution, purposely or otherwise, referred to something quite different from the message. The message apparently looked to congressional authorization, or appropriation, or both, preliminary to the appointment of treaty negotiators to draft a convention on the subject. The resolution, referring as it did to the Halifax commission and its award, clearly looked to the creation of an arbitral commission, whose powers should not be to negotiate but to render an award. This fundamental confusion runs through the debate not merely on this resolution but also the debate on the treaty. Frye's resolution went to the foreign relations committee. When it was reported out, by Frye,<sup>143</sup> it was altered in form. It had no longer any preamble, but read, simply, “Resolved, that in the opinion of the Senate the appointment of a commission in which the Governments of the United States and Great Britain shall be represented, charged with the consideration and settlement of the fishing rights of the two Governments on the coasts of the United States and British North America, ought

<sup>142</sup> Cong. Record, 49 Cong. 1 Sess., XVII, 702.

<sup>143</sup> Feb. 3, 1886.

not to be provided for by Congress." <sup>144</sup> If one did not look at Frye's original resolution, or at the debate, it would be a mystery how honest men could read the same words so differently.

Frye's contention was simple: namely, that American rights under the treaty of 1818 were sufficiently clear, and needed not interpretation, but enforcement. He pointed to the Halifax award as a horrible example of the work of commissions. Senator Morgan, of Alabama, attempted to clear up what Frye meant, and asked him what sort of commission he meant. Frye replied, "I mean any commission." <sup>145</sup> Morgan asked him if he meant to close the door to diplomatic negotiation. This seemed to be a new idea to the Senator from Maine. "I have no power, and if I had I do not know that I would exercise it, to prevent negotiations being made for a treaty touching Canada and her trade and our trade through the usual and ordinary channels, where it would take a two-thirds vote of the United States Senate to ratify any treaty so made." Determined to make the matter clear, Morgan pressed him further, and Frye became more explicit, saying he made "no objection to the treaty making power negotiating, because I regard the protection of the two-thirds vote in the Senate as ample."

Senator Morgan, the ranking Democratic member of the foreign relations committee, supported the resolution but on a wholly different basis from Frye. He

<sup>144</sup> Cong. Record, 49 Cong. 1 Sess., XVII, 3307.

<sup>145</sup> *Ibid.*, 3311.

laid the whole emphasis on the two words, "by Congress." "All this debate has been brought before the Senate of the United States by what I conceive to be a mistaken call upon the Congress of the United States for its assistance in conducting this matter. . . . If such a commission is to be provided for at all, let it be done under the constitutional powers of the President. . . . There is no lack of agencies, no lack of power, no lack of authority. . . . Therefore, I am in favor of this resolution, but I put it upon the ground that Congress ought not to provide by law for a commission." <sup>146</sup>

The resolution passed, by a vote of 35 to 10,<sup>147</sup> but there was no consensus among those who voted for it—no agreement even as to its meaning. In his annual message of 1886, Cleveland took note of the vote: "The recommendation contained in my last annual message was met by an adverse vote of the Senate on April 13 last, and thereupon negotiations were instituted with Her Britannic Majesty's Government." <sup>148</sup> After these negotiations had proceeded some time, they were given in charge of a commission composed of Secretary of State Bayard, William L. Putnam, and James B. Angell, who negotiated a treaty at Washington with a British commission. As soon as the treaty reached the Senate and the foreign relations committee, it was assaulted. The debate was long and heated, and it was

<sup>146</sup> *Ibid.*, 3434-3435.

<sup>147</sup> *Ibid.*, 3440.

<sup>148</sup> Richardson, *Messages and Papers*, VIII, 499.

held in open session. It had for its basis the majority and minority reports of the foreign relations committee on the treaty.

The majority report, drafted by Senator Edmunds, of Vermont, was signed also by Sherman, of Ohio, later Secretary of State; by Evarts, of New York, who had been Secretary of State for Hayes; by Frye, of Maine, and Dolph, of Oregon. It dealt mainly with the merits of the treaty, but it also declared that the negotiation was undertaken in defiance of the Senate's declaration, by the Frye resolution, that there should be no negotiation. This put an interpretation upon that resolution wholly different from that avowed by Frye at the time, certainly different from that which led Morgan to support it, and obviously at variance with Cleveland's reading of it, because in his message of 1886 he distinctly stated that he had entered upon negotiations. The report drew attention to a retaliatory law passed by Congress with virtual unanimity, designed to give the President weapons with which to enforce the American interpretation of the treaty of 1818, and the majority held, by inference, that it was a further expression of opinion by Congress that there should be no negotiation.

The report then referred to the appointment of "plenipotentiaries," with conspicuous quotation marks, emphasizing that they began work shortly before the Senate convened, did their work in Washington, yet were never nominated to the Senate. "It is not difficult to see that, in evil times, when the President of the



United States may be under influence of foreign and adverse interests, such a course of procedure might result in great disaster to the interests and even to the safety of our Government and people. It is no answer to this suggestion to say that an arrangement thus concluded can not be valid or effectual without the advice and consent of the Senate, for the rights and interests of the people of the United States might be so neglected, misunderstood, abandoned, or sold by President's 'plenipotentiaries' as to greatly embarrass, if not defeat their ultimate reassertion in better times and under better administrations, though it is hoped that such will not be the case in respect of these negotiations. The document submitted to the Senate by the President as the outcome of these negotiations, may, it is thought, well illustrate the dangers of such methods. But holding in reserve, for the time being, these grave questions touching usurpations of unconstitutional powers, or the abuse of those that may be thought to exist on the part of the Executive, the Committee thinks it sufficient for the present occasion to deal with the document itself."<sup>149</sup> This oblique assault upon the power of the President to make appointments and negotiate a treaty occupies about a page and a half out of thirty-eight. It was stated in debate, and not denied, that the members of the majority were not agreed on the matter, which may account for the very tentative way in which it was put forth.<sup>150</sup>

<sup>149</sup> Serial 2517, 50 Cong. 1 Sess., Sen. Misc. Doc. 109, 15, 16-17.

<sup>150</sup> Cong. Record, 50 Cong. 1 Sess., XIX, 4981.



The minority report insisted that the matter be met squarely. In committee Morgan had introduced a resolution declaring that the President had acted "within his constitutional powers," and that there had been a "lawful and valid" negotiation. This effort to separate the constitutional question from the question of the merits of the treaty was defeated. The majority wanted whatever advantage might be gained by voicing constitutional doubts, but did not want to commit themselves. The minority proceeded to argue that the acceptance of the draft treaty by the Senate and its foreign relations committee, the consideration of the treaty by the committee and the Senate, were proofs that the Senate regarded the President as having acted within his power.<sup>151</sup> The effort of the majority to make it appear that the negotiation was improper, because of the passage of Frye's resolution, was combatted. This was vital. For if the resolution had meant what the majority interpreted it to mean, and the negotiation had been condemned on that ground, it would have been an effective assertion of a right of the Senate to be consulted in advance of any negotiation, thus not only wiping out the practice of using executive agents, but also destroying, or at least crippling, presidential initiative. The Democratic members of the committee insisted that the initiative of the executive was unimpaired by the adoption of Frye's resolution.

<sup>151</sup> Serial 2517, Doc. 109, 39-40.

Finally, the minority upheld the power of the President to empower Putnam and Angell without asking the consent or approval of the Senate. This was done by an appeal to precedent. A table was prepared, "showing all the appointments of diplomatic agents to negotiate and conclude conventions, agreements, and treaties with foreign powers since 1792. The whole number of persons appointed or recognized by the President, without the concurrence or advice of the Senate, or the express authority of Congress, as agents to conduct negotiations and conclude treaties is four hundred and thirty-eight. Three have been appointed by the Secretary of State and thirty-two have been appointed with the advice and consent of the Senate. . . . An interval of fifty-three years, between 1827 and 1880, occurred during which the President did not ask the consent of the Senate to any such appointment. . . . The constitutional power of the President to select the agents through whom he will conduct such business, is not affected by the fact that the Senate is or is not in session at the time of such appointment, or while the negotiation is being conducted ; or the fact that he may prefer to withhold, even from the Senate, or from other countries, the fact that he is treating with a particular power, or on a special subject. The secret service fund that Congress votes to the Department of State annually is that from which such agents are usually paid. That is the most important reason for such appropriations." <sup>152</sup>

<sup>152</sup> Ibid., 103-104.

The appendix in which the cases were cited was predicated on Livingston's argument that a separate appointment is necessary to empower even a regular diplomatic officer to negotiate a treaty. It did demonstrate very clearly that the original practice was for the President to consult the Senate before engaging in a negotiation, and to nominate the negotiator, even if he were a regular officer. It demonstrated, too, the fact that the original method had been departed from. In their anxiety, however, to prove their point, a refinement was attempted which led them into confusion. There were fairly recent instances in which commissioners had been nominated to the Senate. Conspicuous among these were the commission, composed of Fish, Schenck, Hoar, Nelson, and Williams, which signed the treaty of Washington with Great Britain in 1871, and the Trescot-Grant commission which signed a treaty with Mexico in 1883. To bring these within the range of presidential appointments, a distinction was drawn between being entrusted with a negotiation, and being empowered to sign a treaty.

This was spinning it rather too fine. To assert in the case of men specifically appointed for one act that there is an important difference between their appointment to do that act and the formal conferring of power to do the act is carrying distinctions to the point where there is only an imperceptible difference. Indeed, the point was so fine that the compilers of the table lost sight of it. If it had been rigorously applied there would have been no case in which the Senate partici-

pated. For even in the early days the President asked the consent of the Senate only to the designation of a certain diplomatic official for a specific negotiation; he did not then request consent to the conferring of powers, but conferred them himself. The defenders of President Cleveland were overanxious and sought to prove too much. Fearful lest the commissions of 1871 and 1883 be cited against them, they attempted to explain them away by a process which in this particular was fairly dubbed "elaborate yet feeble."<sup>153</sup>

When the discussion reached the floor of the Senate, the constitutional point received less attention than it did in the reports. Most of the Republicans handled it gingerly. Sherman, indeed, belittled the importance of the reference in the majority report. It presented the matter "merely *arguendo*," he said. "As to the powers of the President . . . to negotiate a treaty I agree with everything that has been said upon that subject."<sup>154</sup> The President of the United States has the power to propose treaties . . . and he may use such agencies as he chooses to employ, except that he cannot take any money from the Treasury to pay for those agents without an appropriation by law. He can use such instruments as he pleases. He can take any kind of a man, a dumb man, a blind man, or a deaf man. In my judgment he has a right to use such means as are

<sup>153</sup> Cong. Record, 50 Cong. 1 Sess., XIX, 6355. For Morgan's argument on the case of the joint high commission of 1871, in support of the point, see *ibid.*, 7168.

<sup>154</sup> By Morgan.

necessary to bring about any treaty.”<sup>155</sup> Evarts, who had been Secretary of State, evaded any discussion of the point.<sup>156</sup> Teller said the method was remarkable, he believed without precedent, “but if the treaty was a good treaty . . . I should be in favor of waiving all these irregularities.”<sup>157</sup>

The only Republican to assault openly the right of the President to make the appointments was Chandler, of New Hampshire. He enumerated all the different ways in which the treaty was a national disgrace. His fourth reason was: “The treaty is a national dishonor, because two of the so-called plenipotentiaries, being appointed by the President without the consent of the Senate, were not constitutionally selected.” Quoting the Constitution on the matter of appointments he declared, “It cannot be soundly contended that the power of the President in the first instance to negotiate treaties with foreign powers, to be submitted to the Senate, gives him the right without the consent of the Senate to appoint ambassadors or plenipotentiaries for any such negotiations.” This case “plainly seems to be a gross violation of the Constitution, wilfully, recklessly, and defiantly perpetrated.” He analyzed and ridiculed the precedents “paraded” by the minority and dwelt upon the fact that the joint high commission of 1871 had been nominated to the Senate. He closed with a denunciation of the “miscalled plenipotentiaries,

<sup>155</sup> Cong. Record, 50 Cong. 1 Sess., XIX, 7287.

<sup>156</sup> *Ibid.*, 7341.

<sup>157</sup> *Ibid.*, 6620.

who were in fact only impertinent private citizens," and introduced a resolution declaring the appointments unwarranted by the Constitution.<sup>158</sup> The argument was not impressive. It was political and heated rather than reasoned and calm. Pertinent points were mingled with arguments almost puerile. It partook of the elaborate yet feeble character which he assigned to the minority report. He did not carry any substantial group of Senators with him, and his resolution died a natural death.

Senator Morgan was insistent that this point should not go to the Republicans by default and he elaborated the arguments of the minority report with a good deal of ability. Quoting the passage in the majority report on the matter, he observed that "these complaints, accusations, and threats, are rested upon an assumption that has no other foundation than mere arrogance. The history of the country, and the practice of Presidents and of the Senate, utterly overthrow this pretention, which is, that the Senate has a right to permit or refuse to permit, any negotiation, on any subject, to take place, without the consent . . . of that body given in advance."<sup>159</sup> The honors in this debate went to the defenders of the President. His opponents realized it. They were not sincere or candid in the argument. Sherman really gave the case away; the Republicans had set up something to be shot at. On the whole the marksmanship of the Democrats was excellent.

<sup>158</sup> Ibid., 6345-6356, 6358.

<sup>159</sup> Ibid., 4986.



President Cleveland furnished the occasion for the next—and save for the debate in Jackson's time—the most important debate on executive agents. Three days after the opening of Cleveland's second term, James H. Blount went secretly as commissioner to Hawaii with authority paramount to that of the regular minister and with certain powers in relation to the navy. His mission did not remain actually secret for very long, but Congress was first officially informed of it in December, 1893. There ensued a flood of resolutions, much debate, and an inquiry by the foreign relations committee. Though the debate was on many resolutions, it may be considered as one discussion. All the tactical advantages were with the Democrats. They had control of the foreign relations committee, and could, therefore, smother resolutions which were hostile in intent.

The point of view of the two groups may best be seen in a report submitted by the foreign relations committee, February 26, 1894. It had been directed by resolution to "inquire and report whether any, and if so, what irregularities have occurred in the diplomatic intercourse between the United States and Hawaii in relation to the recent political revolution in Hawaii."<sup>160</sup> Senator Morgan, who had taken the leading part in defending Cleveland in the Putnam and Angell appointments, wrote, "A question has been made as to the right of the President of the United States to dispatch Mr. Blount to Hawaii as his personal

<sup>160</sup> Serial 3180, 53 Cong. 2 Sess., Sen. Rpt. 227, 1.



representative for the purpose of seeking the further information which the President believed was necessary in order to arrive at a just conclusion regarding the state of affairs in Hawaii. Many precedents could be quoted to show that such power has been exercised on various occasions without dissent on the part of Congress or the people of the United States. The employment of such agencies is a necessary part of the proper exercise of the diplomatic power which is entrusted by the Constitution with the President. Without such authority our foreign relations would be so embarrassed with difficulties that it would be impossible to conduct them with safety or success. These precedents also show that the Senate of the United States, though in session, need not be consulted as to the appointment of such agents, or as to the instructions the President may give them. An authority was entrusted to Mr. Blount to remove the American flag from the Government building in Hawaii and to disclaim openly and particularly the protectorate which had been announced in that country by Minister Stevens, and also to remove the troops from Honolulu to the steamer *Boston*. This particular delegation of authority to Mr. Blount was paramount over the authority of Mr. Stevens, who was continued as minister resident of the United States at Honolulu, and it raised the question whether the Government of the United States can have at the same foreign capital two ministers, each of whom shall exercise separate and special powers. There seems to be no reason why the Government of

the United States cannot, in conducting its diplomatic intercourse with other countries, exercise powers as broad and general, or as limited and peculiar, or special, as any other government. Other governments have been for many years, and even centuries, in the habit of intrusting special and particular missions to one man representing them at a foreign court, and to several men in combination when that was found to be desirable. . . . The committee fail to see that there is any irregularity in such a course as that, or that the authority given to Mr. Blount to withdraw the troops from Honolulu or to lower the flag of the United States was to any extent either dangerous or interrupting to any other lawful authority existing there in any diplomatic or naval officer.”<sup>161</sup>

The minority report, signed by John Sherman, William P. Frye, J. N. Dolph, and Cushman K. Davis, agreed in all the findings except, “*First*; that the appointment on the 11th day of March, 1893, without the advice and consent of the Senate, of the Hon. James H. Blount as ‘Special Commissioner’ to the Hawaiian Government under letters of credence and those of instruction, which declared that ‘in all matters affecting relations with the Government of the Hawaiian Islands his authority is paramount’ was an unconstitutional act, in that such appointee, Mr. Blount, was never nominated to the Senate, but was appointed without its advice and consent although that body was in session when such appointment was made, and continued

<sup>161</sup> Serial 3180, Rpt. 227, 25.

to be in session for a long time immediately thereafter. *Second*; the orders of the Executive Department by which the naval force of the United States in the harbor of Honolulu was in effect placed under the command of Mr. Blount . . . were without authority or warrant in law.”<sup>162</sup>

The constitutional issue was sharply drawn; the facts were clear; the opposing Senators were considerably above the average in capacity. As a result the debate, though partisan in character, more nearly approached a satisfactory constitutional discussion of executive agents than any for sixty years. Senator Hoar, of Massachusetts, took the lead in declaring the appointment unconstitutional. He introduced a number of resolutions on the basis of which he discussed various phases of the subject. He was certain that Blount was an officer, and he put it on the ground that a man could not be above an officer without himself being an officer. “If anybody be a public minister within the meaning of the Constitution, it is certainly a person whose authority is paramount in representing the United States over other public functionaries in the kingdom or power to which he is accredited.”<sup>163</sup> He referred, also, to Section 1674 of the “Revised Statutes,” which says that “ ‘Diplomatic Officers’ shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, chargés d’affaires, agents, and secretaries of

<sup>162</sup> Ibid., 33.

<sup>163</sup> Cong. Record, 58 Cong. 2 Sess., XXVI, 128.

legation, and none others." If, he argued, the President assigned a man diplomatic duties and called him a commissioner, he must be an unconstitutionally appointed diplomatic officer.

Hoar was ready to admit that the President "may to aid him in the performance and exercise of his executive powers, if convenient, appoint a mere agent as a messenger, or spy, or a person to gather or convey information. But such a person, so appointed, could be in no sense an officer of the United States, would take no oath of office, could exercise no official function, and could do no act whatever which could have any binding force on the United States, or any of the people, merely because he has done it."<sup>164</sup> Again and again he recurred to this notion of acts of binding force. "That person is, as it seems to me, clearly a public officer whose acts are binding on other persons by virtue of the authority he is exercising, when such acts originate in his own discretion or judgment, and he is not merely an agent conveying the mandate of another."

On this basis he sought to destroy the value of nearly all of the precedents which were cited. In particular it threw out all cases where the President appointed an agent to negotiate a treaty; the treaty negotiator "merely makes known to the representative of the foreign government with whom he deals what he is authorized to say the President of the United States is willing to do. But nothing of the slightest

<sup>164</sup> Cong. Record, 58 Cong. 2 Sess., XXVI, 430-431.

binding force has happened until the treaty is ratified by the President and until it has been confirmed by the Senate.”<sup>165</sup> Thus “the person engaged to negotiate a treaty is but a mere agent, when his powers are analyzed, to ascertain and report facts. He is clothed with no official authority. He can perform no official act. His function is the same in essence as that of the messenger who should bear dispatches, or a statistician who should collect facts. . . . When he has agreed upon, signed, and brought home the draft of a treaty, nothing whatever has happened except that the President of the United States has received some information for his guidance.”<sup>166</sup> This certainly was expert whittling. The great club with which Chandler and others saw Cleveland beating the Senate into insensibility is reduced to a mere clothespin.

It cannot be said, however, that this argument is weighty. No diplomatic officer can of his own motion bind the nation. He acts either under instructions, which, by definition, limit his discretion, or he acts upon his own discretion, with the possibility that his acts may be disavowed and disowned. The incident about which Hoar was talking furnishes a case in point. Stevens had acted and had “bound” the nation by his act. But Cleveland destroyed the binding force of his action, disavowed it, and reversed the policy. The criterion which Hoar was emphasizing is not adapted to the definition of diplomatic office for just

<sup>165</sup> Ibid.

<sup>166</sup> Ibid., 432.

this reason. His distinction, on this basis, between a treaty negotiator and commissioner sent with powers similar to those of Blount cannot be successfully maintained. One could almost as well say, paraphrasing Hoar and applying it to the other type of diplomatic duty, "When a diplomatic agent has acted in a given situation, nothing whatever has happened except that the President of the United States has received some information as to what his representative on the ground thinks should be done under the circumstances."

Hoar had already set up two "decisive" standards of office, powers in relation to the regular officer, and power to do acts of binding character. He proceeded to set up a third. "There is one decisive test, as it seems to me, of the character which the President undertook to confer upon this agent. The public minister is not liable to be arrested or held personally responsible for acts done by his superior's order. The private citizen has no exemption from full responsibility to all the laws of the country where he happens to be. Will it be pretended that the Government of Hawaii might have arrested Blount for treasonable plotting with the Queen, if he had offered to restore her under any circumstances? They could have done it unless he were a minister of the United States." It is difficult to picture the not very humorous Senator from Massachusetts delivering that utterance with a straight face. Having already admitted that the President could use agents abroad, he must have known that there exists a class who, from the point of view



of diplomatic status, are neither private citizens, nor yet officers. He probably would not have suggested that a man with plenipotentiary powers to negotiate a treaty of annexation would be subject to arrest if a revolution should bring an anti-annexationist party into power. It is a fact, in any case, that presidential agents have in many instances enjoyed diplomatic immunity. His argument on this point was invalid.

Finally, Hoar attacked the appointment of Blount on the ground that to admit the principle that the President could put a private agent over a diplomatic officer and make him paramount in all official capacities, was to admit that "the whole diplomatic service and the whole foreign policy of the United States is a question purely of executive power and the President shares it with no other department of the government."<sup>107</sup> Davis, who supported Hoar, put it pungently. "Mr. President, if this right exists in the President . . . there is not a court in Europe where his familiar can not sit down with paramount authority by the side of a duly confirmed minister and overrule him." The President's "familiar" could dictate to every district attorney, or United States marshal. "The President is Commander-in-chief of the Army and Navy of the United States. There is not a colonel of a regiment, a commander of a military division, or the captain of a man-of-war who is not subject to have *appear* before

<sup>107</sup> Cong. Record, 58 Cong. 2 Sess., XXVI, 432.



him the apparition of a familiar of the President . . . [with] paramount authority to overrule him.”<sup>168</sup>

The answer of Senator Gray, of Delaware, ranks with Livingston's argument in the debate over the Turkish negotiation. His fundamental contention was that Blount had no office, but only employment. He held that after the Constitution was put into operation “necessities for the exercise of the executive power soon required the use of agents in special and temporary employments to perform those acts which could not be performed personally by the Executive; and from the beginning such special appointments have been constantly made, and are sanctioned by uniform and constant usage.”<sup>169</sup> In order to support his contention, he went into the judicial decisions which draw a distinction between office and employment. He concluded with the principle that “where the employment is such that it ends with its performance, then it is not an office.” “Mr. Blount's employment is defined by the letter of instructions received from the Secretary of State. He is the special commissioner of the President to do and perform a certain specified and well defined thing. . . . When that duty was performed the employment was at end and no office remained. . . . Therefore, according to these definitions, it was not an office within the meaning of the Constitution of the United States; it was not a place into which somebody else could be put, and he was not an incumbent of a

<sup>168</sup> Cong. Record, 58 Cong. 2 Sess., XXVI, 698.

<sup>169</sup> Ibid., 2126.

place which existed before he received that appointment." <sup>170</sup>

Senator George also delivered an able speech in support of the practice. He spent some of his efforts in breaking down the distinction which Hoar had manufactured between agents to make treaties and agents to perform other diplomatic duties. To do this he laid emphasis upon the importance of the function of treaty negotiators, dwelling upon the fact that they are not mere messengers. To point his argument he quoted the report of Edmunds on the fisheries treaty, when he said that "the rights and interests of the people of the United States might be so neglected, misunderstood, or sold by the President's 'plenipotentiaries' as to greatly embarrass, if not defeat, their ultimate reassertion." This indicated, he argued, that negotiators of treaties might to some extent bind the nation. There was no real distinction between agents assigned one function and those assigned a different one.

Further, whatever name the President employed, title had no necessary relation to office. "The President may appoint persons called envoys, ministers, ambassadors, commissioners, or chargé d'affaires, or whatever you may be pleased to call them, for the specific purpose of making a treaty. It has been conceded that he may make the appointment during the session of the Senate and without submitting to the

<sup>170</sup> Ibid., 2126, 2127.

Senate the name of the person so appointed.”<sup>171</sup> In the same way the President may appoint agents for other duties. Whatever the duties or the title, they are immaterial. “The true rule is, that in the sense of that clause of the Constitution which requires appointments to office to be made by and with the advice and consent of the Senate, an appointment or employment to do a particular thing, or specific things, is without constitutional tenure and is not an office. This idea is plain in the Constitution.”<sup>172</sup> The idea is plain because “in every instance in which an office is established the tenure or term or the estate of the officer in the office is invariably fixed, either by express words or by an implication clear and indisputable.” “The Constitution . . . refers alone to appointments of officers whose terms or tenure of office are determined by efflux of time. . . . It must therefore result that it does not refer to an employment like that of Mr. Blount, which being for the performance of a specific duty, necessarily terminated with the performance of that duty and not by efflux of time.”<sup>173</sup>

To illustrate the fact that persons might not be officers, even though they performed the duties of officers, George referred to Section 1695 of the “Revised Statutes,” which empowers the President to make rules as to the appointment of certain diplomatic and consular officers. The regulations made by the Presi-

<sup>171</sup> Cong. Record, 58 Cong. 2 Sess., XXVI, 3133.

<sup>172</sup> *Ibid.*, 3134.

<sup>173</sup> *Ibid.*, 3135.

dent under that authorization provide for the appointment by diplomatic officers of persons to perform temporarily the functions of consuls, and known as vice consuls. Vice consuls, so appointed, "possess all the powers and can perform all the duties, and they assume all the responsibilities" of regularly appointed officers, "and the only difference (and it is that difference which makes them no officers) is that they do not have the tenure prescribed by the Constitution of the United States. . . . They are in every sense officers, except alone that they are appointed for a temporary period, . . . and that is the reason why they are not officers." The principle involved in the case of vice consuls he illustrated with other cases drawn from the practice of the government.<sup>174</sup>

The debate on the Blount case involved many other points. All but one of these—the President's power over the armed forces of the United States—are auxiliary to those which have been set forth. It is not worth while to examine them in detail. They stand or fall along with the principal arguments.

The use of executive agents next came to an issue during McKinley's administration. The question was not at all a partisan one. Republicans were in control, Republicans made the complaint, they made the investigation, and rendered the decision. The general conclusion of the Senators was the direct opposite of the conclusion at which the Representatives arrived. The occasion was the development of the practice of

<sup>174</sup> Ibid., 3136.

appointing members of the Senate and House upon commissions which sometimes partook of a diplomatic character. The commission to the Brussels monetary congress in 1892, the commission to discuss bimetalism in Europe in 1897, the joint high commission to settle difficulties with Canada in 1898, the commission to negotiate peace with Spain, these and others had members of one or both branches of Congress among their personnel. The question naturally arose whether this practice was in conflict with the Constitution, which provides:<sup>175</sup> "No Senator or Representative shall, during the time for which he is elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time, and no person holding any office under the United States shall be a member of either house during his continuance in office."

Senator Hoar was sharply critical of the practice. "The President has repeatedly, within the last six years, appointed members of the Senate and House to be commissioners to negotiate and conclude, as far as may be done by diplomatic agencies, treaties and other arrangements with foreign Governments, of the gravest importance." "If that practice continues, it will go far, in my judgment, to destroy the independence and dignity of the Senate." Under this practice Senators "receive and obey the command of the Executive, and then come back to their seats to carry out as Senators

<sup>175</sup> Art. I, Sec. 6.

a policy which they have adopted at the command of another power, without any consultation with their associates or learning their associates' opinions." In a passage quoted in the chapter on the constitutional position of executive agents,<sup>176</sup> Hoar declared it to be the "merest cavil" to say they are not officers. It is interesting to observe that by this declaration he abandoned his fine-spun distinction between negotiators and other diplomatic agents. In 1893 treaty negotiators were mere messengers; in 1898 it was "merest cavil" to deny they were officers.

Hoar was quite within bounds when he argued that acceptance of executive employment impaired the independence of a Senator. It was no mere theory with him. He was bitterly opposed to the treaty of peace with Spain. But two leaders of the majority and one of the minority had participated in the negotiation; they were committed to the treaty, and Hoar not unnaturally felt that the cards were stacked against him. There was great personal feeling, therefore, in his remark that the practice "places the Senator so selected in a position where he cannot properly perform his duties as a Senator. He is bound to meet his associates at the great National Council Board as an equal, to hear their reasons as well as to impart his own. How can he discharge that duty if he has already not only formed an opinion, but acted upon the matter under the control and direction of another department of the Government." This argument is admissible so

<sup>176</sup> Above, 162-163.



far as it relates to the proprieties; but it does not affect the law. Indeed, one of his illustrations demonstrates this. He pointed out that Congress "has thought it best to extend this [constitutional] prohibition [as] is shown by the statute which forbids, under a severe penalty, members of either House of Congress from representing the Government as counsel." This statute was an *extension* of the constitutional prohibition, not a mere declaration or interpretation. In similar manner Congress could forbid Senators or Representatives from serving in other capacities as executive agents. But it would be extending the constitutional prohibition to do so.

Indeed, a move was made in this direction. "Several bills and resolutions were introduced which were intended to prohibit such appointments in the future. The matter was referred to the Judiciary Committee. It turned out that three members of that committee had been appointed by President McKinley on the Canadian commission. One of them, however, said he had accepted the appointment without due reflection, and he was quite satisfied the procedure was wrong. The committee disliked exceedingly to make a report which might be construed as a censure of their associates, so I was instructed to call on President McKinley and say to him on behalf of the committee, that they hoped the practice would not be continued. That task I discharged. President McKinley said he was aware of the objections; that he had come to feel the evil very strongly; and while he did not say in terms



that he would not make another appointment of the kind, he conveyed to me, as I am sure he intended to, the assurance that it would not occur again." Either Senator Hoar's curtain lecture to the President represented the committee's view of the proprieties rather than the law, or it was more sensitive to the feelings of its members than to a breach of the Constituion.<sup>177</sup>

Meanwhile the House of Representatives, without debate, directed the judiciary committee to ascertain and report, "First, whether any member of the House has accepted any office under the United States; and Second, whether the acceptance of such office under the United States has vacated the seat of the member accepting the same." In pursuing the investigation, there was as little politics as one could ever expect to find. There was just one fact of political character which might bias the investigators. If members of the House were to be unseated, they would be prominent members of the majority party. Before taking action which would have that result one would expect a very clear case to be made. In the cases which the committee had under review there were a number of commissions established by law; nominations to some of the commissions were sent to the Senate; oaths of "office" were administered in some cases; and in one case the term for which the members were to serve was limited to two years. There were all the elements present to make proper test cases. The committee,

<sup>177</sup> For the preceding quotations, see Hoar, *Autobiography*, II, 47-51.

moreover, engaged in a thorough study of the cases on the law of office, and took testimony from capable lawyers. The report declared that none of the commissioners were officers. "A careful consideration of all the positions above referred to will show that they are merely transient, occasional, or incidental in their nature." Even in the case where a two-year period was assigned, it was not setting a tenure to an office, but was designed to fix a limit of time within which a certain investigation must be completed. Each commission was simply an "instrument to procure detailed information" on a given subject, not to exercise generally and in all pertinent cases a regular authority as part of the permanent administration.<sup>178</sup>

In the winter of 1905 and 1906 there occurred the Spooner-Bacon debate, the classic discussion of the respective powers, duties, and responsibilities of the President and the Senate in foreign relations. It was precipitated by the appointment of Ambassador White and Minister Gummeré to be delegates at the Algeciras conference, and by the situation in Santo Domingo, including the work of Commander A. C. Dillingham there. There were not the elements in the situation to turn the discussion to the President's power of appointment, and to the question whether or not executive agents are officers. Instead, the main point at issue concerned the initiative of the President in the management of foreign relations. Senator Spooner, however, emphasized that "the Senate has nothing what-

<sup>178</sup> Serial 3841, Rpt. 2205.

ever to do with the *negotiation* of treaties or the conduct of our foreign intercourse and relations save the exercise of the one constitutional function of advice and consent which the Constitution requires as a precedent condition to the making of a treaty."

In making his point Spooner declared, "The President negotiates the treaty. . . . He may employ such agencies as he chooses to negotiate the proposed treaty. He may employ the ambassador, if there be one, or a minister, or a *chargé d'affaires*, or he may use a person in private life whom he thinks by his skill or knowledge of the language or people of the country with which he is about to deal is best fitted to negotiate the treaty."<sup>179</sup> With this point of view Bacon did not take flat issue. He did not, in terms, contend that the President could not employ such agents as he saw fit. Some years later, in 1914, when John Lind was in Mexico, Bacon supported the right of President Wilson to send him, and accurately defined his status. "The President of the United States has sent an envoy, his personal representative, not an ambassador, not one clothed with official power."<sup>180</sup>

Since 1906 there has been very little discussion indeed. Despite the very large number of agents employed since 1913, the volume of congressional discussion regarding executive agents is very small—and discussion on the appointing power or on official character is quite insignificant. There have been resolu-

<sup>179</sup> Cong. Record, 59 Cong. 1 Sess., XL, 1418.

<sup>180</sup> Ibid., 63 Cong. 1 Sess., L, 3172.

tions of inquiry as to status;<sup>181</sup> there have been assaults on the character, capacity, or special fitness of some of the agents;<sup>182</sup> but little else. One attempt was made by Senator Works, of California, who introduced a resolution, January 17, 1917, "directing" the Secretary of State to report, "1. What, if any, persons have been appointed or designated, without confirmation by the Senate, to represent the Government or the President in any other country. 2. The nature of their appointments and by whom made, the services required of them, to what countries they were appointed and for what term, how long they served, their names, where located, what was the designation of their offices, respectively, and the salary paid to each of them, respectively, and who of them are still in service under such appointments or designations without being confirmed by the Senate."<sup>183</sup> It was not meant seriously, he did not care to discuss it, and it went to oblivion in the foreign relations committee.<sup>184</sup>

Looking back over the long debate it is possible to see that progress has been made. Inconsistency and political bias have nearly always been present. Lack

<sup>181</sup> For resolution by Senator Penrose on status of W. B. Hale, see Cong. Record, 63 Cong. 1 Sess., L, 3385, 3423, 3459, 3495, 3533, 3572.

<sup>182</sup> See, e. g., *ibid.*, 63 Cong. 2 Sess., LI, 8529-8532; *ibid.*, 65 Cong. 2 Sess., LVI, 9873-9879.

<sup>183</sup> *Ibid.*, 64 Cong. 2 Sess., LIV, 1523.

<sup>184</sup> *Ibid.* For other discussions during the period, see *ibid.*, LVI, 1082 ff., 1333-1334, 1713; *ibid.*, 65 Cong. 3 Sess., LVII, 4931.

of familiarity with previous discussion has sometimes made Congress begin over what was once well done. On the other hand, the development of a mass of precedents and the constant clarification of constitutional law have been elements of progress. In fact, there are certain indications which lead one to think that something like a consensus has been reached. It is now thirty years since there has been an important debate on this topic. During that period there have not only been many executive agents, some with striking powers, but there have been the elements of political rancor, and the control of the legislature by a party other than that which controlled the executive,—conditions which have hitherto produced these discussions.

The most striking illustration of the use of executive agents was the appointment of the American mission to negotiate peace with the Central Powers. The personnel was selected while the Senate was in session. It was clear that many Senators did not approve of all those chosen. Yet no Senator rose in his place to say that the members of the mission should be nominated to the Senate. There seems to have developed a consensus as to the appointing power. At the same time there were evidences of dissatisfaction that no Senator was appointed. Later Senators Lodge and Underwood accepted appointment by President Harding as delegates, with the rank of ambassador, to the disarmament conference. No word of criticism was voiced in the Senate. This appears to indicate that a tacit agreement has been reached to the effect that

executive agents are not officers. There may again be discussion, but there will never again be the same basis for discussion that there was in 1831, or even in 1893. The important phase of congressional debate on the topic appears to have been closed.

PART II  
RANGE OF PRACTICE





## CHAPTER V

### AGENTS SENT TO OPEN RELATIONS

When one seeks to classify executive agents, and thereby to gain an understanding of the range of practice, it is natural to examine the circumstances and motives which have induced the President to choose this type of agent. The present chapter and those which follow attempt to show when and why executive agents have been used in the conduct of foreign relations. It is obvious that in undertaking any such classification there will be difficulties. Few actions are dependent upon a single motive. In disentangling mixed motives, in seeking out and dwelling upon one or two as predominant, others which are less important, and yet not without significance, are thrown into the background, or out of the picture entirely. In the following discussion an attempt has been made to present mixed motives as fairly as possible. Whenever there has been a combination of reasons for the use of an agent, and those reasons have each some very real importance, the agent is mentioned in each classification.<sup>1</sup> A second difficulty in classifying agents on the basis of motives arises from the fact that motives are intangibles, and easily concealed. Very

<sup>1</sup> Usually it is done rather more fully, with an attempt to sketch the whole setting, when the first mention is made. Subsequent notices are briefer.

often, even when there is an avowed motive, it is not the true one. Occasionally motives may be inferred with some accuracy, at other times there is only conjecture. Despite these limitations, classification on this basis is most instructive.

The first group is composed of agents sent to open relations with foreign countries, either those which have been long established, and about whose recognition there is no question, or those which the United States has just decided to recognize. While it has not been the ordinary practice to employ executive agents for this purpose, there are certain special circumstances which have, from time to time, rendered this procedure advisable. A review of specific cases will make clear the nature of these conditions.

The first instance occurred very early in Washington's administration. Portugal on several occasions had "made the most amicable advances for cultivating friendship and intercourse with the United States. The exchange of a diplomatic character had been informally, but repeatedly suggested on their part. It was our interest to meet this nation in its friendly dispositions, and to concur in the exchange proposed."<sup>2</sup> Washington desired that a *chargé* should be sent, rather than a minister. This was to be the first new diplomatic mission established by the new government; it involved a precedent. If a grade higher than *chargé* were to be sent to Lisbon, it might necessitate raising the grade of the American missions to the more im-

<sup>2</sup> Sen. Ex. Jol., I, 74.

portant countries—and thus the expenses of the diplomatic establishment would be greatly increased.

Washington was not only eager that the United States should live within its income, he also desired as little contact with Europe as possible. His dictum in the farewell address, since become classic, of making our relations abroad as little *political* as possible, was already the rule of his conduct. Trade with Portugal was very slight. Our commercial relations needed only a chargé; to send a minister would not only involve expense, it would imply greater political contact than he desired. On the other hand, the etiquette of the court presented difficulties, and Washington was not willing that the representative of the United States should be discriminated against in the slightest degree.

The question at issue, therefore, was one preliminary to the exchange of official representatives. It could not be settled through regular channels, for the question was one of defining the regular channels. Being preliminary to the establishment of official relations, some informal method had, of necessity, to be adopted. Therefore, August 11, 1790, Colonel David Humphreys was sent in a "private character" to conduct the preliminary negotiations.<sup>3</sup>

Thirty years later, in February, 1820, Charles S. Todd was sent to be the American representative to the

<sup>3</sup> Ibid.; see Jefferson to Humphreys, Aug. 11, 1790, MS. Foreign Letters, CXXI, 392-393; Humphreys to Secretary of State, Nov. 30, 1790, May 3, 1791, MS. Desp. Portugal, III.

unrecognized states of Venezuela and New Granada. His agency was expected to last two or three years,<sup>4</sup> and it did, in fact, last beyond the recognition of Colombia, June 17, 1822.<sup>5</sup> Todd, however, had come home for a visit and was in this country at the time when recognition was decided upon.<sup>6</sup> There was some doubt in the mind of President Monroe whether to let Todd go back and resume his duties or to send out a minister.

Two things led to a decision to send Todd. The first was the question as to the grade of the diplomatic officer to be sent. The same sort of situation existed as that which precipitated Humphreys' mission to Portugal; there was some doubt whether the two countries each had it in mind to send representatives of the same grade to the other. Monroe was perfectly ready to send either a minister or a chargé according as Colombia desired, Todd was to ascertain which grade the Colombian government wished. The second reason for sending Todd was to make possible prompt representations against an act of the congress of Colombia which provided a discriminating duty unfavorable to the United States. The Colombian chargé in Washington regarded this discrimination as a "mere inadvertency" on the part of his government, but Adams

<sup>4</sup> Adams to Todd, Feb. 22, 1820, MS. Desp. to Consuls, II, 176-177.

<sup>5</sup> Moore, Digest, I, 90.

<sup>6</sup> Adams to Todd, Jan. 28, 1822, MS. Desp. to Consuls, II, 242; Brent(?) to Todd, May 11, 1821, *ibid.*, 256.

instructed Todd to "make every suitable representation to obtain such explanation or repeal of it as will place the United States in their commercial relations with Colombia upon at least an equal footing with the most favored nation, whether European or American."<sup>7</sup>

During the decade between 1820 and 1830, a whole series of special agents were used in opening the way to the establishment of diplomatic relations with the Ottoman Porte. After the breakdown of certain early moves in the direction of opening relations at the end of the eighteenth century, the matter lay dormant for several years.<sup>8</sup> The origins of the fresh interest which manifested itself about 1817 are not very clear, but the revival of interest is unmistakable. When it was decided to make a fresh effort to establish relations, the question immediately arose whether to negotiate directly, or to depend upon the friendly offices of a third power.

Three sources of information led to direct efforts on the part of the United States, rather than an approach by way of a third power. In the first place, naval officers brought back reports which indicated a Turkish desire for direct negotiation.<sup>9</sup> In the second place,

<sup>7</sup> Adams to Todd, July 2, 1822, *ibid.*, 260-261; Reports of the Secretaries of State of the Republic of Colombia, 1823 (London, 1824), 26.

<sup>8</sup> C. O. Paullin, *Diplomatic Negotiations of American Naval Officers, 1778-1883* (Baltimore, 1912), 126-129; "Papers of James A. Bayard, 1796-1815," ed. E. Donnan, *Annual Report of the American Historical Association*, 1913, II, 91-92.

<sup>9</sup> Paullin, *Negotiations of Naval Officers*, 130-131.

American merchants,—and particularly David Offley, who became American commercial representative in Smyrna,—resented being under the protection of another flag, and having to deal with the Turkish authorities mediately instead of directly. This resentment was based in part upon the fact that the intermediary power did not always support American interests, using its position to injure rather than aid Americans. Offley, therefore, acting on his own responsibility, established a working agreement on tariff matters with the Turks. He strongly advised undertaking direct negotiations.<sup>10</sup> The advice of this American, who had achieved success and who was one of the leaders in a trade that made American commerce to Smyrna worth about a million dollars annually, was likely to be influential.<sup>11</sup> Finally, indirect and unofficial inquiries through French channels resulted in the same advice,—“From everything I see, Sir, and all my reflexions on the subject, I am thoroughly persuaded of the indispensable necessity of treating directly with the Sublime Porte itself, and without the intervention of *any European Authority*. It is however essentially important that the mission of negotiation should be wrapped in perfect secrecy. It is impossible to be too cautious on this point; and after all, the secret will

<sup>10</sup> I. M. I., an officer of His Most C[hristian] Majesty, to M. J. Jaussand, MS. Neg. Turkey, I.

<sup>11</sup> T. Harris, *The Life and Services of Commodore William Bainbridge*, United States Navy (Philadelphia, 1837), 231.



probably be too soon discovered by the Powers who have an interest in the failure of his efforts." <sup>12</sup>

Acting upon the basis of this advice, the first moves were made with gingerly caution. In 1820, Commodore Bainbridge went out as commander of the Mediterranean squadron. Bainbridge had made an earlier, and involuntary, trip to Constantinople in the frigate *George Washington*, at which time Turkish officials had made advances looking to the establishment of treaty relations.<sup>13</sup> Bainbridge, therefore, was a fit person to whom to confide such business. He was expected to go, if possible, to Constantinople, and to sound out the Turkish government with a view to reporting on the possibility of making a treaty.<sup>14</sup>

At the same time Luther Bradish was, for private reasons, going abroad for an extended period of travel. He was a man of education, discretion, and capacity. Fortified with letters of introduction and other credentials, he was assured of a cordial reception in influential social circles.<sup>15</sup> He could be accurately described, therefore, as "being about to visit different foreign

<sup>12</sup> I. M. I. to M. J. Jaussand, Bujuk-deré, June 1, 1817, MS. Neg. Turkey, I.

<sup>13</sup> Harris, *Life of Bainbridge*, Chap. II; especially Bainbridge to Secretary of the Navy, *ibid.*, 52-53.

<sup>14</sup> *Ibid.*, 231; Adams to Middleton, minister to Russia, May 13, 1822, MS. Inst. U. S. Mins., IX, 123; J. Q. Adams, *Memoirs*, V, 197-198.

<sup>15</sup> Proceedings of the New York Historical Society, Oct., 1863.

countries with a view to gratifying a commendable curiosity, and of obtaining useful information." <sup>16</sup>

The two missions were separate. But Bradish went out with Bainbridge and they remained in contact with each other.<sup>17</sup> Bainbridge was prevented from going to Constantinople, and had to content himself with information gathered at Smyrna by his secretary.<sup>18</sup> Bradish, on the other hand, was more successful, reaching Constantinople. His report reflects his instructions. He was to attempt to discover whether the interests of the United States would be promoted by a treaty, whether the making of a treaty was practicable, and if so "what is the most eligible mode of accomplishing this object." He seems to have gone some distance beyond these points, but they were the essential part of his business. To the first two questions he returned an affirmative answer. On the third he was very positive that the United States should act alone, without any reliance whatever upon the aid of a friendly power, an opinion which he supported with concrete examples illustrative of the unfortunate consequences of a contrary policy. He urged, in this connection, the necessity of secrecy. The internal conditions of the Turkish Empire and the jealous bickerings of rival powers "induced the Porte itself to suggest that the person authorized on the part of the United States to treat should not appear here as

<sup>16</sup> Passport, April 15, 1820, MS. Inst. Turkey, I, 176.

<sup>17</sup> Adams to Middleton, loc. cit.

<sup>18</sup> Harris, *Life of Bainbridge*, 231; Paullin, *Negotiations of Naval Officers*, 133.

a minister, but merely as a private individual." Finally, he urged promptness, regretting that there was not then on the ground an authorized negotiator.<sup>19</sup>

Bradish's mission produced no result. Adams was not pleased with his work. It had not remained secret. On the contrary, exaggerated rumors of its importance had preceded his arrival by some months.<sup>20</sup> Lord Strangford, the British ambassador at Constantinople, wrote letters, which came into Adams's possession, and which conveyed an impression of Bradish likely to discredit his report.<sup>21</sup>

The initiative for the next move came from an American adventurer, George Bethune English, who, "notwithstanding his eccentricities, approaching to insanity,"<sup>22</sup> had qualities which recommended him to Adams. He was an educated man, a graduate of Harvard in 1808. Studies in law and theology, accompanied by polemical tracts against Christianity, were followed by a period of journalistic work in the West. Entering the marines, he went to the Mediterranean as a lieutenant. He

<sup>19</sup> Bradish to Adams, Dec. 20, 1820, MS. Inst. Turkey, I, 176-192; printed in part, Serial 221, Doc. 250, 4 ff.

<sup>20</sup> Ibid.

<sup>21</sup> Bradish to Adams, April 15, 1826, MS. Inst. Turkey, I, 192-195. Apparently Lord Strangford asserted that Bradish pretended to be a diplomatic officer of the United States, charged with diplomatic business of importance, presumably a treaty. Other material relating to this mission may be found in the same volume: Bradish to Navoni, Feb. 7, 8, 1821, 50, 73; Navoni to Secretary of State, Jan. 24, 1828, 45; "Summary Narrative of Communications with the Sublime Porte," 51.

<sup>22</sup> J. Q. Adams, *Memoirs*, VIII, 62.

resigned to enter the army of Ismail Pasha, became an officer of artillery, and was of conspicuous service.<sup>23</sup> He became a Mohammedan, adopted Turkish dress, and took a Turkish name.<sup>24</sup> Here, then, was a man who not only knew the language of the country, but who thoroughly understood its customs. He was, if loyal to his native country, almost ideally fitted to be an agent in so tentative a negotiation as that on foot.

English himself proposed to the President, in 1823, that he should undertake a mission. Adams simply consented and gave practically no instructions, merely authorizing English "to proceed on the voyage suggested in your letters of the 26th and 28th ultimo and for the purposes expressed in them." The only specific direction given English was to "communicate, as often as you shall have convenient and safe opportunities, any information, commercial or political."<sup>25</sup> That English did. His other duties are pretty clearly evident from his reports. He attempted to make a collection of copies of treaties then in force with the Porte. The French treaty he secured in Marseilles, and sent home.<sup>26</sup> He sought, also, to get copies of the capitulations with England, the Netherlands, and Sweden.<sup>27</sup>

<sup>23</sup> Appleton's *Cyclopedia of American Biography*, ed. J. G. Wilson and J. Fiske (New York, 1887-1900), II, 358.

<sup>24</sup> Offley to Adams, Jan. 24, 1824, MS. Neg. Turkey, I, 44.

<sup>25</sup> Adams to English, April 2, 1823, Serial 221, Doc. 250, 12.

<sup>26</sup> English to Adams, Aug. 6, 1823, MS. Inst. Turkey, I, 76-77; extracts, Serial 221, Doc. 250, 12-13.

<sup>27</sup> English to Adams, Dec. 27, 1823, MS. Inst. Turkey, I, 80-84; extracts, Serial 221, Doc. 250, 13-14.

The third branch of his mission was to sound out the disposition of the Porte. He resumed his Turkish name and dress, took a small house in Constantinople, and sought to be "considered by the Europeans here merely as one who has heretofore travelled in the East and who visits Constantinople in an oriental dress to have the greater facility to observe what is worthy of notice. Indeed under favor of this garb I penetrate almost everywhere, and have opportunities of learning the mode of transacting public business at the Ottoman Porte which the European dress would infallibly exclude me from."<sup>28</sup> Last of all, he sought to exploit his acquaintance with the Capudan Pasha, or grand admiral, and use his influence to advance American interests.<sup>29</sup>

The next mission grew directly out of that of English. In one of his reports he quoted the Capudan Pasha as saying, "Let the government of the United States secretly authorize the commandant of their squadron in the Mediterranean to meet me in the Archipelago, with instructions to inform me precisely what it is that the United States wish to obtain of the Sublime Porte. I will communicate this overture to the Sultan himself who will decide as he thinks proper either to encourage or refuse the advances of the

<sup>28</sup> Id. to id., Dec. 27, 1823, loc. cit.; omitted in published extract.

<sup>29</sup> Id. to id., Dec. 27, 1823, loc. cit.; id. to id., Nov. 23, 1823, Feb. 8, 1824, MS. Inst. Turkey, I, 77-80, 84-92. Other material on the mission, id. to id., May 14, Dec. 9, 1824, *ibid.*, 104, 106. J. Q. Adams referred to the mission. *Memoirs*, VI, 227.

United States. If the Sultan should show himself favorably disposed an arrangement advantageous to your country may probably be effected; whereas an American ambassador who should come to Constantinople to *negotiate with the Divan* would probably find himself embarrassed by intrigue which he could neither discover nor control.”<sup>30</sup>

John Quincy Adams referred directly to this passage when he instructed Commodore John Rodgers in February, 1825. Rodgers was to meet the Capudan Pasha and discuss matters with him. As a basis for his propositions he was furnished with a copy of the treaty between France and the Porte, which English had secured at Marseilles, and the wishes of the administration were summed up in three points: “first, to trade with all the ports of Turkey in whatever quarter of the globe situated, on the footing of the most favored nation. Secondly, to obtain free ingress and regress through the Dardanelles, to and from the Black Sea, and, thirdly, to be allowed to appoint consuls to reside at such ports as the interests of our commerce may require.”<sup>31</sup> In the discharge of these duties English was to be associated with Rodgers as interpreter and assistant in any other way that Rodgers might direct.<sup>32</sup>

<sup>30</sup> English to Adams, Feb. 8, 1824, loc. cit.; quoted, Paullin, *Negotiations of Naval Officers*, 136.

<sup>31</sup> Adams to Rodgers, Feb. 7, 1825, MS. Inst. Turkey, I, 108-110; Clay to Rodgers, Sept. 6, 1825, *ibid.*, 110-111; other instructions, Feb. 9, Sept. 7, 1825, *ibid.*; also MS. Inst. Sp. Miss., I.

<sup>32</sup> Adams to English, Jan. 3, 1825, Serial 221, Doc. 250, 19.



Rodgers performed his task with skill and address. He kept his mission secret, and while speculation was rife concerning his plans and purposes, the true object of his visit was not surmised.<sup>33</sup> He waited until an opportune approach could be made, and then sought an interview with the Capudan Pasha.<sup>34</sup> When the conference took place, Rodgers was explicit and at the same time tactful. The Capudan Pasha agreed to lay the matter before the Sultan personally.<sup>35</sup>

Though Rodgers came home before receiving a definite account of the sentiment of the Sultan from the Capudan Pasha, the American government was not without contact. Offley, the aggressive American merchant at Smyrna, had long since shown skill and effectiveness in caring for American interests. He, rather than English, had acted as interpreter when Rodgers discussed matters with the grand admiral,<sup>36</sup> and Rodgers wrote Clay a strong endorsement of Offley, commenting upon his experience, high standing,

<sup>33</sup> C. O. Paullin, *Commodore John Rodgers, Captain, Commodore, and Senior Officer of the American Navy, 1773-1838* (Cleveland, 1910), 340.

<sup>34</sup> Rodgers to Clay, Aug. 31, Oct. 14, 1825, MS. Inst. Turkey, I, 1-8; Offley to Clay, Nov. 28, 1825, *ibid.*, 37-38; Offley to Rodgers, Nov. 30, 1825, *ibid.*, 14-17.

<sup>35</sup> Rodgers to Clay, July 19, 1826, *ibid.*, 30-35; other letters from Rodgers to Secretary of State, Nov. 5, Dec. 25, 1825, May 11, 13, 1826, Feb. 14, 1827, *ibid.*; July 28, 1827, enclosing correspondence with the Capudan Pasha, MS. Miscellaneous Letters; Offley to Rodgers, Nov. 30, 1825, and Consul Cox to Rodgers, Oct. 15, 1825, MS. Inst. Turkey, I.

<sup>36</sup> Rodgers to Clay, July 19, 1826, *loc. cit.*



and the fact that he understood "the policy and feelings of the Turkish government and people."<sup>37</sup> On his own responsibility, "at the request of several American merchants," Offley applied to the government at Constantinople for permission for American vessels to go there, with assurance of a friendly reception, and he sought for them the advantages of "the tariff agreed on with me for this place." The reply came from the minister of war, the same man whom Rodgers had met as grand admiral. It was "a particularly friendly and complimentary letter, inviting me to visit Constantinople as the moment was favorable for the termination of a commercial treaty between the Porte and the Government of the United States."<sup>38</sup>

On the heels of this report came one from Nicholas Navoni. He had been connected with American interests since 1820. When Bradish appeared in Constantinople, the chief dragoman of the Porte had used Navoni as a messenger.<sup>39</sup> He served Bradish, who, upon leaving, not only made him presents and expressed his hope that the American government would reward his services, but authorized him to solicit an answer to a note which Bradish had sent to the Porte.<sup>40</sup> After Bradish left, Navoni continued to interest him-

<sup>37</sup> Rodgers to Clay, Dec. 25, 1825, MS. Inst. Turkey, I, 17-18.

<sup>38</sup> Offley to Clay, Nov. 26, 1827, *ibid.*, 39-42; earlier correspondence from Offley, Jan. 24, Feb. 27, 1824, Nov. 28, 1825, MS. Desp. Turkey, I; see MS. Consular Desp. from Smyrna, I.

<sup>39</sup> "Summary Narrative," by Navoni, Serial 221, Doc. 250, 57.

<sup>40</sup> Bradish to Navoni, Feb. 8, 1821, MS. Inst. Turkey, I, 73; *id.* to *id.*, Feb. 7, 1821, Serial 221, Doc. 250, 56.

self in the establishment of relations between the United States and Turkey, and about the same time that Offley was receiving encouragement, Navoni was "being earnestly solicited by Mr. A. Franchini, counsellor of state, and first interpreter of the Russian embassy, to renew his communications with the Porte on the subject of an American treaty." This he did, and found the Porte eager for a treaty. He expressed his belief that Offley would make a capable and an acceptable negotiator.<sup>41</sup>

Finally, Offley, who had received a number of intimations that the time was ripe for a negotiation, received a note for the Secretary of State, which, though it was unsigned, was clearly from the minister of foreign affairs. The last sentence read, "If the United States, without delay, adopt the necessary measures and dispositions for proceeding to the conclusion of a treaty of commerce suitable to the dignity of the Sublime Porte, they will find the latter well disposed in this respect."<sup>42</sup>

In the face of such an accumulation of evidence that the Turkish government was ready for negotiations, it was not to be expected that Adams would make no response. The President himself, in the absence of Clay, sent a secret instruction to Offley, July 21, 1828, authorizing him to make a treaty, in cooperation with Commodore Crane, who was going out as commander

<sup>41</sup> Navoni to Clay, Jan. 24, 1828, MS. Inst. Turkey, I, 45-50.

<sup>42</sup> Ibid., 74.

of the Mediterranean squadron.<sup>43</sup> The next day Crane was instructed. The plan was for Offley to go to Constantinople alone, "and upon ascertaining that a favorable treaty may be concluded," he was to give Crane as early notice as possible, whereupon Crane "should then join him to complete the business."<sup>44</sup> Edward Wyer, who went out with despatches, was to serve as secretary, and Navoni as interpreter.<sup>45</sup>

There was every reason to expect success, but the negotiation did not succeed. Crane was not much of a diplomat, and did not facilitate the business; but that was not the cause of failure.<sup>46</sup> The difficulty was Offley's insistence upon the principle that the United States should have as favorable treatment as any other power. The Turkish foreign minister trimmed his demands until there was not much reality left to support the theory of differential treatment. But Offley would not yield an inch on his principle. On that issue the negotiation broke down.<sup>47</sup> News of the failure to

<sup>43</sup> Adams to Offley, July 21, 1828, MS. Inst. Turkey, I, 94-96.

<sup>44</sup> Adams to Crane, July 22, 1828, *ibid.*, 96-98.

<sup>45</sup> Adams to Crane and Offley, July 24, 1828, *ibid.*, 100-101; commission to Crane and Offley, *ibid.*, 93; letter of President to Secretary of the Navy, July 23, 1828, *ibid.*, 99. The naval arrangements are recorded on succeeding pages.

<sup>46</sup> Offley to Crane, Dec. 22, 1828, *ibid.*, 101.

<sup>47</sup> Offley to Adams, Jan. 31-Feb. 28, 1829, MS. Neg. Turkey, I, 105-114; Offley to Reis Effendi, Feb. 28, 1829, *ibid.*, 117; Offley to Crane, Feb. 27, 1829, *ibid.*, 136; see also correspondence on this mission, MS. Desp. Turkey, I.

make a treaty did not reach Washington until Jackson had replaced Adams.<sup>48</sup>

The break in the negotiation, however, was not irreparable, even without new instructions. The Turkish foreign minister, before Offley left Constantinople, sent a message saying he expected him back after the holidays, and while Offley did not agree to return, he was ready to do so if circumstances looked propitious.<sup>49</sup> The new administration did not contemplate any radical change in the plans for the negotiation, but a new figure, Charles Rhind, appeared upon the stage. Rhind was one of the oldest American merchants trading to the Levant,<sup>50</sup> and had been in correspondence with Offley about the possibilities of trade in the Black Sea.<sup>51</sup> He was early in contact with Van Buren, who had him appointed consul to Odessa and contemplated associating him with Offley in the proposed new negotiation with Turkey.<sup>52</sup>

Rhind was given all the previous correspondence to study, and he prepared a digest of it, with comments of his own interpolated. It was accompanied by a strong recommendation for haste in renewing the effort to

<sup>48</sup> J. Q. Adams, May 19, 1829, notes failure, "so, however, that with new instructions they may succeed with ease." *Memoirs*, VIII, 151.

<sup>49</sup> Crane and Offley to Jackson, March 17, 1829, MS. Neg. Turkey, I, 119; Offley to Jackson, March 21, 1829, *ibid.*, 120.

<sup>50</sup> Serial 221, Doc. 250, 79.

<sup>51</sup> Offley to Rhind, Aug. 9, 1829, MS. Neg. Turkey, I, 147.

<sup>52</sup> Van Buren to James A. Hamilton, Aug. 13, 1829, *Reminiscences of J. A. Hamilton*, 143.

make a treaty. His whole attitude was sharply critical of Offley. "I am utterly confounded," he said in one of his passages of commentary, "at the conduct betrayed in this negotiation. The Porte grants us everything we require, without any equivalent excepting the opportunity afforded them of using our nominal tariff as a means to enhance the new one of the French. . . . Mr. Offley is an old and valued friend of mine, and the person I should have selected to conduct this negotiation, but it appears he has acted under some strange infatuation. We have lost a chance of securing a most valuable commerce actually pressed upon us. . . . I am convinced an undue influence in some shape or other has actuated in this negotiation. It is on the whole one which reflects no credit on our country." <sup>53</sup> Implicit in the whole document was a confidence that he could do better than Offley had done.

Meanwhile Baron Krudener, the Russian minister in Washington, was urging that the negotiation be undertaken.<sup>54</sup> Rhind had made an impression, and so, early in September, 1829, a new commission was organized, composed of Rhind, Offley, and Commodore James Biddle, who had replaced Crane as commander of the Mediterranean squadron. As before, only one of the commissioners was to go to Constantinople to negotiate. Rhind was chosen. "There are reasons of the most cogent nature, arising from the apprehended interference of other powers, and the notoriety which

<sup>53</sup> MS. Neg. Turkey, I, 141 ff.

<sup>54</sup> Van Buren to James A. Hamilton, loc. cit.

has been given to Mr. Offley's agency in the late negotiation, which would, in the opinion of the President, render it expedient that neither Commodore Biddle, nor Mr. Offley should appear at Constantinople until the negotiation has been, through the instrumentality of Mr. Rhind, so far brought to a conclusion as to remove all ground for apprehension from that source, and to require their presence for the consummation of the business. It is, therefore, the wish of the President that this course should be observed, and he places entire confidence in the intelligence, prudence, and capacity of Mr. Rhind."<sup>55</sup>

Rhind entered into the business with enthusiasm. His anticipations were roseate. He hoped and expected to be back before Congress adjourned, with a treaty the importance of which would be so great, that, to quote his own outburst, "I venture to assert no administration since the days of Washington will have effected an object of such vast importance; when developed it cannot fail to draw applause from every quarter of the union."<sup>56</sup> He left with elaborate precautions of secrecy, having prepared himself diligently, and having seen the Russian minister, with whom he conferred at length.<sup>57</sup>

<sup>55</sup> Van Buren to Rhind, Offley, and Biddle, Sept. 12, 1829, MS. Inst. Turkey, I, 196-202; other pertinent documents on succeeding pages.

<sup>56</sup> Rhind to Hamilton, Oct. 14, 1829, *Reminiscences of J. A. Hamilton*, 149.

<sup>57</sup> Rhind to Van Buren, Sept. 25, Oct. 20, 1829, MS. Neg. Turkey, I, 145, 149; Rhind's voluminous correspondence is all in that volume.



Rhind made a treaty, but in nearly every other expectation he was disappointed. His secret was kept up to a certain point; then when it became known, his work was dogged with intrigue. The mission, which was to be so brief and brilliant, was long and fatiguing. He fell out with his colleagues on the commission and an unseemly wrangle resulted. He yielded a point of form and included a secret article, which the Senate threw out. On his return to the United States he was involved in a fuss with the President, which cost him time, money, temper, and lost him whatever credit might have come from success.<sup>58</sup> He was not even given the opportunity to exchange the ratification. That task was committed to Commodore Porter, who became American chargé and put the diplomatic representation of the United States in Constantinople on a regular footing.<sup>59</sup>

The development of American commercial enterprise, which carried American diplomacy to the Levant, led to diplomatic contacts in the Pacific as well. The first of the Pacific islands with which the United States was brought into touch was Hawaii. With the growth of commercial and whaling interests, it was necessary to establish some sort of relationship with the islanders. In his report in 1818, John B. Prevost, who went to the

<sup>58</sup> MS. Neg, Turkey, I, 156 ff.; *Reminiscences of J. A. Hamilton*, 173-234, *passim*.

<sup>59</sup> Van Buren to Porter, MS. Inst. Turkey, I, 223-224; and Porter's despatches, MS. Desp. Turkey, II. Other letters bearing on the exchange of ratifications are instructions from Secretary of State to Navoni. MS. Inst. Turkey, I, 207, 208.



Columbia River as a special agent, mentioned the fact that Russia appeared to be interested in the Sandwich Islands and expressed apprehension lest the czar should gain possession.<sup>60</sup> In May, 1825, Commodore Hull, in command of the Pacific squadron, was instructed to proceed to Hawaii on a visit of "friendly inspection," and "to relieve the native authorities of the annoyance occasioned by deserters, and to endeavor to adjust the claims of certain American citizens there resident."<sup>61</sup> Hull, being unable to go, sent Captain Thomas ap Catesby Jones, who negotiated a treaty of friendship, commerce, and navigation with the king. This was the first treaty formally negotiated by the Hawaiians, but in making it Jones exceeded his powers. While, therefore, it served as a sort of working agreement, it was never ratified by the United States.<sup>62</sup> This act was regarded as constituting recognition of Hawaii, and establishing diplomatic relations,<sup>63</sup> but no regular diplomatic official was sent out for many years thereafter.

The next mission which involved opening relations with countries with which the United States had had no treaties was an extraordinary one. It consisted of a New Hampshire sea captain, who toured the Far East

<sup>60</sup> Prevost to Adams, Nov. 11, 1818, *Annals of Congress*, 17 Cong. 1 Sess., II, 2136-2140.

<sup>61</sup> *For. Rel.*, 1894, App. II, 8.

<sup>62</sup> *Ibid.*, 35, 36; Serial 468, 28 Cong. 2 Sess., H. Rpt. 92, 8, 13, 20.

<sup>63</sup> Serial 3469, 54 Cong. 2 Sess., Sen. Doc. 40, 5.

as a six-dollars-a-day diplomat, making treaties wherever possible. The idea appears to have been very largely his own. Edmund Roberts had been engaged in the Far Eastern trade and felt the importance of commercial treaties with the countries there. When Levi Woodbury, also from New Hampshire, came into Jackson's cabinet, a point of contact between Roberts and the administration was established. Through Woodbury discussions were carried on which resulted in Roberts' mission in 1832.<sup>64</sup> The information at the Department of State concerning the countries he was to visit was not very extensive or very exact. The titles "appertaining to their majesties" had to be represented by a blank space on his special passports, to be filled in on the spot, "those titles being unknown here." And inasmuch as he might find it possible to make a treaty with some power not listed in his instructions, he was given both blank passports and letters of credence.<sup>65</sup> Only one of the powers with which he was to deal had been previously approached or had made any advances to the United States. The Imaum of Muscat had sent a letter to the President which opened the way for a treaty. With the others Roberts himself must broach the subject.<sup>66</sup>

<sup>64</sup> Livingston to Woodbury, Jan. 3, 1832, MS. Inst. Sp. Miss., I, 73.

<sup>65</sup> Livingston to Roberts, Feb. 14, 1832, *ibid.*, 76; also MS. Credences, II.

<sup>66</sup> *Id.* to *id.*, July 23, 1832, MS. Inst. Sp. Miss., I, 76-78; for an account of the mission, see T. Dennett, *Americans in Eastern Asia* (New York, 1922), 129 ff.

The success of the mission was regarded as hinging partly upon its secrecy. Through the instructions runs a fear of powers "whose interest it might be to thwart the objects the President has in view."<sup>67</sup> No one save the captain of the *Peacock*, the sloop of war on which Roberts sailed, was to know his true status. In order to give him some "ostensible employment," and prevent embarrassing questions, he was given the rating of captain's clerk.<sup>68</sup>

In all his goings and comings the envoy was to teach Eastern folk to thank God that Americans were not as other people. He was explicitly instructed to point out the superior virtues of the United States in dealing with the countries of the East. "We never make conquests, or ask any nations to let us establish ourselves in their country as the English, the French, and the Dutch have done in the East Indies."<sup>69</sup> Among the powers which Roberts was presumably to visit were Cochin China, Muscat, Siam, the Birman Empire (Burma), Acheen, and Japan.

The interest in opening communication with Japan was emphasized. The China trade, the whaling industry, and other influences were carrying American vessels into the Pacific in ever greater numbers. Not infrequently ships were wrecked on the Japanese coast, and their crews were harshly treated. As early as

<sup>67</sup> Id. to id., Jan. 27, 1832, MS. Inst. Sp. Miss., I, 73-75; he was further instructed Aug. 18, 1832.

<sup>68</sup> Livingston to Woodbury, Jan. 3, 1832, loc. cit.; Livingston to Roberts, Jan. 27, 1832, loc. cit.

<sup>69</sup> Id. to id., Jan. 27, 1832, loc. cit.

1815, Commodore Porter had written Monroe that nothing would better conduce to the safety of American whalers than to establish amicable relations with Japan. Later John Quincy Adams had urged that it was necessary that Japan should be opened.<sup>70</sup> Roberts was instructed to "be very careful in obtaining information respecting Japan—the means of opening a communication with it, and the present value of its trade with the Dutch and Chinese."<sup>71</sup> Later he was informed that a separate mission to Japan was in contemplation, "but if you find the prospect favorable, you may fill up one of the letters of credence with the proper title of the Emperor, and present yourself there for the purpose of opening a trade."<sup>72</sup>

Roberts made treaties with Siam and Muscat.<sup>73</sup> After the Senate had consented to their ratification, he was sent, in 1835, on a new mission to exchange ratifications. But he was also to continue his roving diplomacy. It was desired that he make an effort to go to

<sup>70</sup> Ann. Rpt. Am. Hist. Ass., 1911, I, 135.

<sup>71</sup> Livingston to Roberts, July 23, 1832, loc. cit.

<sup>72</sup> Id. to id., Oct. 28, 1832, MS. Inst. Sp. Miss., I, 78-79; for this mission, see E. Roberts, *Embassy to Eastern Courts* (New York, 1837), passim.

<sup>73</sup> Communications from Roberts are in one of the bundles of manuscript marked Special Agents. They begin Feb. 1, 1832, from New York, and continue till April 18, 1836. He died at Canton, June 12, 1836. The same bundle contains letters from W. C. H. Waddell on the subject of Roberts' mission, and letters from the officers of the *Peacock* after his death. One letter from Roberts, Dec. 15, 1834, is in MS. Misc. Letters. The Manuscripts Division of the Library of Congress has an important collection of Roberts' papers.

Japan and secure a treaty. Also, he was to make an especial effort to get a treaty with Cochin China.<sup>74</sup> Everything was done to facilitate his mission by way of gifts. The Emperor of Cochin China desired sheep, a request which the Dutch for some reason had evaded. Sheep, therefore, were sent along with Roberts, who was urged to deliver them if possible, otherwise to use them as ships' stores.<sup>75</sup>

All these missions of Edmund Roberts, save the commission to visit Japan, were predicated upon the idea that after the treaty was concluded there would be no regular diplomatic officer resident at the several courts. Under those circumstances it would have been absurd to have attempted to establish a legation in order to make a treaty, and then withdraw the legation. A special agency was the only logical way to achieve the result desired. There was also a second reason for the employment of this type of mission: namely, the uncertainty of success. The United States could not afford to send a formal mission to countries of the character of those to which Roberts was despatched, and then have it result in failure, because the prestige of this country would be impaired thereby. The failure of a special agent would not involve the dignity of the United States so deeply.

Another special agency to make a treaty with a country to which the United States did not propose to

<sup>74</sup> Instructions, Forsyth to Roberts, Aug. 21, 1834, March 20, 1835, MS. Inst. Sp. Miss., I, 109-136; other instructions to April 18, 1835, *ibid.*

<sup>75</sup> *Id.* to *id.*, April 10, 1835, *ibid.*, 141.

send a minister occurred in 1838. In 1830 the Republic of Colombia broke in pieces, forming the new states of New Granada, Venezuela, and Ecuador. The United States, though it made some efforts to collect Ecuador's share of certain claims against the old confederation, did not extend recognition until 1838. In that year James C. Pickett, who was going out as chargé to the Peru-Bolivian Confederation, was appointed a special agent to proceed to Quito to negotiate a treaty. This he did successfully, but it was many years before the state of our relations and the commerce between the two countries warranted the establishment of a legation.<sup>76</sup> Under these circumstances a special agency was the natural sort of mission to undertake the negotiation.

This mission served as a precedent. When it was determined, in 1852, to recognize Paraguay, John S. Pendleton, chargé at Buenos Ayres, was despatched on a special mission to Asuncion in order to make a treaty, which involved recognition and the opening of relations.<sup>77</sup> Robert C. Schenck, American minister to

<sup>76</sup> Calhoun to Delazon Smith, Jan. 7, 1845, MS. Inst. Sp. Miss., I, 202-209; Serial 344, 25 Cong. 3 Sess., H. Doc. 3, 46; Malloy, *Treaties*, I, 255; other instructions to Pickett with reference to this mission, July 18, 1838, MS. Inst. Peru, XV; credence, MS. *Credences* II; reports, eight numbered despatches, with many enclosures, the last dated Guayaquil, July 3, 1839, MS. *Desp. Peru*, V. He signed the treaty June 13, 1839.

<sup>77</sup> Serial 3469, Doc. 40, 12; Moore, *Digest*, I, 91; Serial 1720, 44 Cong. 2 Sess., Sen. Ex. Doc. 38, 36; instructions to Pendleton to proceed on his mission, April 28, 1852, MS. Inst. Argentine, XV, 49; credence, April 9, 1852, MS. *Credences*, III; reports of

Brazil, was associated with Pendleton in the mission, but each was authorized to act alone if cooperation was impracticable. Schenck, as a matter of fact, played no part.<sup>78</sup> Nearly a year passed and no news of a treaty was received. President Fillmore, therefore, decided to take advantage of a naval expedition that was fitting out, to accomplish the object. Lieutenant Thomas Jefferson Page was going in the *Water Witch* under instructions from the Navy Department to survey the tributaries of the river La Plata, and to report on the commercial possibilities of the countries which it watered.<sup>79</sup> Page was now associated in a commission with Schenck and Pendleton, or either of them, to make the desired treaty. In case neither could act, he was authorized to negotiate alone.<sup>80</sup> Before Page's arrival a treaty had been made by Pendleton.<sup>81</sup>

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the mission, MS. Desp. Argentine, VIII, beginning with No. 14 and scattered through to No. 30.

<sup>78</sup> Instructions to Schenck, MS. Inst. Brazil, XV, Nos. 15, 16, 18, 19, pp. 199, 204, 205, 206; despatches from him, MS. Desp. Brazil, XIX, XX, scattered through from No. 29 to No. 50. For payment to Schenck, see Serial 781, 33 Cong. 2 Sess., H. Ex. Doc. 7, 27.

<sup>79</sup> J. B. Moore, *History and Digest of the International Arbitrations to which the United States has been a Party* (Washington, 1898), II, 1487.

<sup>80</sup> Everett to Page, Feb. 1, 1853, MS. Inst. Sp. Miss., III, 18-20; letters of introduction, etc., *ibid.*, 21; credence, Jan. 31, 1853, MS. Credences, III; despatches from Page, MS. Secret Service Vol. and a volume in the archives of the Navy Department; letter from Secretary of the Navy to Secretary of State with reference to the mission, Feb. 7, 1855, MS. Misc. Letters.

<sup>81</sup> Page to Marcy, June 14, 1853, MS. Secret Service Vol., I, 663-664.



The next occasion for this sort of mission occurred in connection with the recognition of the Orange Free State and the establishment of diplomatic intercourse with it. The Orange Free State was established as a result of the treaty of Bloemfontaine, February 25, 1854. Though England had renounced its sovereignty, the United States did not extend recognition at once, probably because there was very little intercourse between this country and the new state. On June 24, 1871, however, Willard W. Edgecomb, consul at Cape Town, was named a special agent to negotiate a treaty with the Orange Free State. He was also instructed to transmit to the Department of State a full report upon the condition of that country, its institutions, trade, and whatever else might be of interest.<sup>82</sup>

Nathaniel Niles was sent to Austria early in the Van Buren administration to exploit possibilities for increasing the American tobacco business. In the course of his work on that mission he had an interview with the minister of Sardinia at Vienna. The United States had no diplomatic representative at the Sardinian court, and had no treaty. Hitherto the commercial relations had been governed by domestic regulations which, however, were founded upon a mutual agreement between the two governments.<sup>83</sup> The min-

<sup>82</sup> Serial 3469, Doc. 40, 8; Moore, Digest, I, 116; Malloy, Treaties, II, 1311. In the preamble of the treaty Edgecomb is called a special agent. Richardson, Messages and Papers, VII, 162.

<sup>83</sup> Eighth annual message of Monroe, Dec. 7, 1824, *ibid.*, II, 251.

ister pointed out to Niles that diplomatic relations would be advantageous to both countries. The opinions of the two men were then embodied in notes which Niles transmitted to Secretary of State Forsyth in 1838.<sup>84</sup> It was as a direct result of this episode that Niles was instructed to "repair to Sardinia, and endeavor to conclude a commercial arrangement, securing upon the most advantageous terms, the admission of American tobacco into the ports of that country, and, if practicable, to extend it so as to embrace the general trade between the two nations." It was anticipated that in the event of a successful negotiation, a diplomatic officer would be accredited to the Sardinian court; in case of the failure of the negotiation, matters would continue as theretofore.<sup>85</sup>

When, however, the treaty was made, it did not result in an immediate exchange of diplomatic representatives. Sardinia soon sent a chargé,<sup>86</sup> but an American chargé was not sent as promptly. President Van Buren said that it was his intention to express his appreciation of the cordial spirit of the Sardinian government in making with the United States its first

<sup>84</sup> Niles to Forsyth, Feb. 18, 1838, MS. Desp. Austria, I; Serial 473, 29 Cong. I Sess., Sen. Doc. 118, 3-7; credence, MS. Credences, II, 298; Niles's reports, Sept. 26, 1838, July 29, 1839, MS. Desp. Sardinia (Italy); there is also a letter in MS. Special Agent Bundle, Department of State.

<sup>85</sup> Forsyth to Niles, May 2, 1838, MS. Inst. Italy, I, 3-4; Serial 473, Doc. 118, 8.

<sup>86</sup> Solar de la Marguerite, secretary of foreign affairs, to Niles, Sept. 29, 1838, *ibid.*, 13.

commercial treaty, by the immediate appointment of a diplomatic officer to reside at the Sardinian court. The failure of the Senate to consent promptly to ratification postponed the request of the President for the necessary appropriation, and a special agent, Abraham Van Buren, was directed to go to Turin to explain that when Congress next met the President would request the appropriation.<sup>87</sup> Van Buren failed to carry out his instructions and the explanations were made instead to the Sardinian chargé.<sup>88</sup> In May, 1840, H. Gold Rogers was appointed chargé and the relations of the two countries were put on a regular footing.<sup>89</sup>

The next mission has many similarities to those of Edmund Roberts. Indeed, it was undertaken in order to carry forward the work broken off by Roberts' death and to make some changes in the arrangements which he had negotiated. Joseph Balestier was the agent. He had been commercial representative of the United States in Singapore, but had returned and resigned in 1849, because the compensation was not adequate.<sup>90</sup> There was available, therefore, a man of experience, who was familiar with the customs and peoples of southeastern Asia, and who knew the facts

<sup>87</sup> Forsyth to Van Buren, April 18, 1839, MS. Inst. Italy, I, 1-2.

<sup>88</sup> Van Buren to Forsyth, Nov. 29, 1839, MS. Desp. Sardinia (Italy); Forsyth to Van Buren, loc. cit.

<sup>89</sup> Sen. Ex. Jol., V, 284; Forsyth to Rogers, June 6, 1840, Serial 473, Doc. 118, 26.

<sup>90</sup> Serial 631, 32 Cong. 1 Sess., Sen. Rpt. 218, 1.

about American commerce in that quarter.<sup>91</sup> In addition, there was genuine need of commercial arrangements in that area. The English, Dutch, French, Spanish, and Portuguese were acquiring and developing ports and colonial establishments, which would serve as the basis for an expanding trade, and which were certain to be prejudiced to American commercial growth.

Balestier's first objective was Cochin China, with which Roberts had failed to conclude a treaty. To add to the difficulties inherent in the situation, an American naval officer had some time before committed an act of hostility which outraged the sensitive feelings of the emperor. The first thing necessary for Balestier to do, therefore, was to deliver a letter "of friendship and conciliation" from the President and "make every proper and possible explanation and atonement." He was then to seek a treaty, emphasizing, as Roberts had been instructed to do, the nonaggressive character of America and the safety with which relations with the United States could be entered upon.

Siam was to be his next objective. Roberts' treaty had not had the desired effect and it needed revision. Thence Balestier was to proceed to Borneo, which had been active and successful in stamping out piracy in the China Sea. Borneo, moreover, was worthy of attention because it had an abundant supply of coal, suitable for steamships, and easily available. Other resources,

<sup>91</sup> He had his weak points. See Dennett, *Americans in Eastern Asia*, 350.

which promised to be of great value, were beginning to be developed, and American enterprise was seeking such commercial openings. Balestier was to make treaties with the Sultan of Bruni, and also with Rajah Brooke of Sarawak.

In addition to making these stops for the purpose of negotiating treaties, calls were to be made at a number of islands, in some places to convey thanks for generous treatment of castaway sailors, and elsewhere for the moral effect of "a specimen of our naval force."<sup>92</sup> This ambitious program was intended to take six months and was to be on a crisp businesslike Yankee basis, exhibiting an economy both of time and of presents. It took a very much longer time and then failed to accomplish the ends which had been sought.<sup>93</sup> The reasons why a special agency was used were precisely similar to those which governed the Roberts agencies.

While Balestier was attempting to open diplomatic communication with the states of the East, another diplomatic man-of-all-work was busy in Europe. A. Dudley Mann was employed in one mission after another from March, 1846, to July, 1852. That which

<sup>92</sup> Clayton to Balestier, Aug. 16, 1849, MS. Inst. Sp. Miss., I, 292-301.

<sup>93</sup> Webster to Balestier, Feb. 15, 1851, *ibid.*, 317-318; and Serial 618, 32 Cong. 1 Sess., Sen. Ex. Doc. 38, 119-120. His manuscript report in Department of State is mislabelled "Report on Chinese Consulates." Reports on the mission by Secretary of State for President, Jan. 16, Feb., 1852, MS. Report Book, VI, 393, 402. MS. Consular Desp. from Ningpo, I, has reference to his mission.

falls into the category now under review was his fourth and last, and had for its purpose the opening of diplomatic relations with Switzerland.

Mann had been in Europe for four years, and he had covered it thoroughly. He had had missions to the German states, and had been in the very center of the revolution of 1848 as it swept through Germany. He had visited the chief ports of Great Britain and Ireland and of Western Europe. He had lived a good deal in Paris, studying political developments from that angle. Finally, he had been sent to watch developments in Hungary and virtually to extend recognition if events seemed to warrant it. During all these experiences he had enjoyed an extraordinary freedom of comment. A convinced democrat, he viewed the rise and sweep of the revolutionary movement with unbounded enthusiasm, and if his despatches did not picture a new heaven and a new earth, the new Europe was to be a close copy. With bitterness and despair he saw the picture fade—and was as much disgusted with the doctrinaire and impractical politics of the republicans as he was alarmed at the strength of the forces of reaction.

Again and again he referred in his despatches to the menace to Switzerland. In September, 1849, he expressed the fear that the Czar of Russia was determined upon the "obliteration" of Switzerland. "One thing is very certain: If the autocrat is disposed to wipe out the existence of the Helvetian Republic he may do so, in my opinion, with entire impunity; for I



consider him politically omnipotent on the Continent. Kingdoms and republics, for all practical uses, in the balance of power are merely his departments and crowned heads and presidents his prefects." <sup>94</sup> In January, 1850, he had become convinced that the United States was not without responsibility in the matter. The attack was not merely upon Switzerland. The "Autocrat" was "striking at the genius of our government through a kindred but feeble state. Under such circumstances I regard it just as imperative upon us to take the initiatory step for opening diplomatic relations with Switzerland as it was for recognizing the independence of Hungary in the event of its establishment." <sup>95</sup>

When action did not promptly follow his suggestion, his distress increased. "I cannot but regard it as most unfortunate for the cause of self-government, humanity, and civilization that the administration declined to act promptly . . . to open diplomatic relations with the Helvetic republic. Such a procedure would not only have encouraged the friends of freedom to persevere against their cruel, brutal oppressors, but it would also

<sup>94</sup> Mann to Clayton, No. 8, Sept. 8, 1849, Serial 7330, 65 Cong. 2 Sess., Sen. Doc. 282, 28-29. In a private letter to Clayton, No. 3, Sept. 9, 1849, he reverts to the subject. *Ibid.*, 30.

<sup>95</sup> *Id.* to *id.*, No. 22, Jan. 10, 1850, *ibid.*, 64. In a private letter to Clayton, No. 1, Aug. 25, 1849 (*ibid.*, 23), he had mentioned the establishment of a legation, but for different reasons. "At Berne, in Switzerland, we should also, in my opinion, have a legation. Its central position, with the institutions of the country, seem to me to require that we should be represented there."



have caused the Absolutist Crowned Heads to pause in their unhallowed purposes. The Czar is too well advised not to know how to estimate our strength as a nation, and the influence of our example on the Continent. He is perfectly aware that we are not a Republic in name merely, but one in fact and in truth, capable of performing great and noble deeds; and had he seen us warmly grasping the hand of our feeble sister, as dangers multiplied around her, he would have attributed the circumstance to an abiding desire on our part for the preservation and extension of our principles abroad, and, with his accustomed prudence, governed his ambition accordingly. I adhere faithfully to our policy of physical non-intervention in European affairs, but I conceive that we fail to do our duty in standing aloof, presenting a cold aspect to our Swiss brethren at such a time—manifesting an utter indifference to their destiny. . . . This year is to decide the destinies of Europe. I tremble for the result. I wish I could feel that we ‘have no bark upon the sea—no son in the slaughter.’ If the rational republicans of Switzerland, of France, of Germany, of Austria, of Italy, shall be politically obliterated, an alliance will be perfected, at no distant day, having for its covert object, whatever may be its ostensible one, the prostration of that which a monarchical journal designated a few days ago, as ‘the greatest of all earthly nuisances—the government of the United States of America.’ ”<sup>96</sup>

This impassioned despatch produced results. It was

<sup>96</sup> Id. to Id., April 11, 1850, MS. Desp. Mann.

decided to appoint Mann chargé to Switzerland, and the President prepared to ask Congress for an appropriation. But Mann feared that the delay unavoidably involved in congressional action might defeat the object, and he requested to be made a special agent.<sup>97</sup> His instructions were sent June 15, 1850, and were couched in his own vein. They adverted to the early and constant interest of the United States in "all liberal demonstrations throughout the world," and asserted that this country had been "emulous to be the first to acknowledge new states claiming admission into the family of nations." Now, "when the reactionary movement of continental Europe seems to threaten the obliteration of liberal political principles, we owe it to the character of our own free government, as well as to the commercial interests of our country, to strengthen, by all the means at our disposal, the ties which bind us to the Swiss Confederation, which like our own happy land is the home of the free. We are aware that the total subversion of Swiss nationality has been threatened; and the sentiments of the American Government cannot be those of indifference to the fate of the Helvetic Republic. We do not propose to make any physical demonstration in its behalf," but the making of a treaty was to be a gesture of sympathy and support.<sup>98</sup> Such were the motives which led to the first American treaty with

<sup>97</sup> Serial 1018, 35 Cong. 2 Sess., H. Rpt. 254.

<sup>98</sup> Clayton to Mann, June 15, 1850, MS. Inst. Sp. Miss., I, 310-313; see MS. Credences, III, 364.

Switzerland, the first general treaty made by Switzerland, and the establishment of diplomatic relations on a regular and permanent footing.<sup>99</sup>

Edmund Roberts had not gone to Japan, and for a number of years no further effort was made to establish diplomatic contact with that country. In 1837, C. W. King had made an effort, as a purely private venture, to break through, but had met with complete failure. He published a book on his experience which kept alive and in a state of agitation<sup>100</sup> the idea of opening Japan. The idea grew, especially after the United States succeeded in making a treaty with China.<sup>101</sup> Indeed, Caleb Cushing, then commissioner to China, wrote Polk, suggesting that a new attempt be made to open relations with Japan, and the President despatched, in 1844, an authority for him to treat, but it arrived after his departure.<sup>102</sup> In 1845, a com-

<sup>99</sup> Mann to Clayton, Nos. 1-25, July 6, 1850—Sept. 2, 1852, MS. Desp. Mann; Serial 1018, Rpt. 254. Henry Sargent is called a special agent to Switzerland in the statement of contingent expenses for foreign intercourse in 1852, but his instructions simply directed him to carry the ratified treaty to Mann and gave him no power to exchange ratifications in Mann's absence. Serial 679, 32 Cong. 2 Sess., H. Ex. Doc. 46, 41; Webster to Sargent, Sept. 24, 1851, MS. Inst. Sp. Miss., I, 341.

<sup>100</sup> Nitobé, "American-Japanese Intercourse," 133-135; Dennett, *Americans in Eastern Asia*, 247-248.

<sup>101</sup> This effort began in 1843; the treaty was made in July, 1844, and sent to the Senate in Jan., 1845. J. H. Haswell, *Treaties and Conventions Concluded between the United States and Other Powers since July 4, 1776* (Washington, 1889), 1256.

<sup>102</sup> Aug. 15, 1844, MS. Inst. China, I, 23; Aug. 14, 1844, MS. *Credences*, III, 99; Paullin, *Negotiations of Naval Officers*, 222.

mittee of the House recommended a new effort.<sup>103</sup> Alexander H. Everett, who was going out as commissioner to China, was consequently authorized, April 16, 1845, to negotiate a treaty with Japan.<sup>104</sup>

Everett went out in the *Columbus* with Commodore James Biddle, who was instructed by the Secretary of the Navy to "take the utmost care to ascertain if the ports of Japan are accessible," and to hold himself in readiness to take the commissioner to Japan, and if Everett was unable to go, "you may yourself, if you see fit, persevere in the design, yet not in such a manner as to excite hostile feeling, or a distrust of the government of the United States."<sup>105</sup> Everett did, in fact, decide not to go to Japan, and transferred his full power to negotiate a treaty to Commodore Biddle.<sup>106</sup> The visit of Biddle was unsuccessful, and may, indeed, have done harm rather than good.<sup>107</sup>

A little more than two years after this failure, however, the first successful break was made. Com-

<sup>103</sup> Nitobé, "American-Japanese Intercourse," 136.

<sup>104</sup> Moore, Digest, V, 734; April 15, 1845, MS. Inst. China, I, 34; April 16, 1845, MS. Credences, III, 127; Everett to Buchanan, Jan. 5, 1847, Serial 620, 32 Cong. 1 Sess., Sen. Ex. Doc. 59, 69.

<sup>105</sup> May 22, 1845, Serial 620, Doc. 59, 64; Dennett, Americans in Eastern Asia, 249-250.

<sup>106</sup> Everett to Buchanan, loc. cit.; whole correspondence, MS. Desp. China, III.

<sup>107</sup> For opinions, see Nitobé, "American-Japanese Intercourse," 136; Paullin, Negotiations of Naval Officers, 231-232; Dennett, Americans in Eastern Asia, 250; Moore, Digest, V, 734, and citations.

mander James Glynn, of the *Preble*, acting under the command of Commodore Geisinger, to whom the mission had been suggested by John W. Davis, American commissioner to China, succeeded in recovering American castaways who had been held prisoners at Nagasaki. The exploit naturally gave Glynn considerable prestige, and on his return to the United States, President Fillmore discussed with him the problem of opening Japan, and requested him to submit his views in writing.

Glynn's opinions are important because some of them, at least, are fairly clearly reflected in the plans for the mission of Aulick, and later that of Perry. He referred to a proposed line of steamships from California to China, for which "a depot to stop at in Japan is absolutely necessary." Public pressure would soon insist upon a treaty, even if it had to be extorted by force. Immediate action, Glynn believed, would get a treaty without force. "Recent occurrences have attracted the attention of the two countries toward each other, but as yet there has no unkind feeling grown into existence between the two people. It is important that advantage should be taken of this favorable condition of things which cannot, reasonably, be anticipated to continue much longer, at least on our part, where our interests are so largely involved in greater accommodation for our commerce." He went on to state the sort of letter the President should write. It must emphasize that America would not interfere in religious matters; it must studiously avoid

any implication that the Japanese were any less civilized than Westerners; it should be plain and natural in style, easy to translate and difficult of misinterpretation; and it should contain no complaints of past conduct.

He proposed ways and means of conciliating possible jealousies on the part of commercial rivals, and an important part of his recommendation was embodied in a description of the proper negotiator. "He should be a man of matured judgment and of ready tact to comprehend and to extricate himself from any unpleasant position he might find himself suddenly and unexpectedly placed in while negotiating with a people so peculiarly situated, and a government so peculiarly constituted as is that of Japan: he should have patience to sustain himself under trying circumstances not designed to annoy him, and spirit to repel every attempt to exact from him any humiliating act of ceremonial deference to the native authorities: he should be a naval officer, knowing what a man-of-war could be made to do under any circumstances, and what he should do with her in an unexpected emergency, or in an unlooked for turn in the character of the negotiation. While he is the peaceful bearer of a friendly letter, he should be studying the best mode of conducting hostile operations against the empire, if they should ever be deemed necessary by his government; and with this object he should, if possible, get into the country, claiming the right to deliver in person his letter to the highest functionary of the local gov-



ernment to whom it may be directed." Finally, Glynn recommended that the agent should go by way of Europe, where he could confer with the American ministers in England and Holland, "and through them make unofficially the explanations necessary to secure, as far as possible, the friendly feelings of those governments in the success of our projects."<sup>108</sup>

Of course, Glynn's was by no means the only voice raised in behalf of negotiations. Earlier in the same year Aaron H. Palmer, director of the American and Foreign Agency of New York, who was recognized as an expert on Far Eastern questions, had been in correspondence with the President and in conference with Webster, the Secretary of State. His plan was based on a demand for indemnity for mistreatment of American seamen and on the exploitation of grievances, and looked to the use of blockade if peaceful representations did not bring prompt results. What he proposed had important support in memorials from the principal merchants of New York and Baltimore who were interested in the Eastern trade.<sup>109</sup>

At almost the precise moment when Glynn was in Washington expressing his views, Commodore Aulick, who was preparing to go out to command the Far

<sup>108</sup> Glynn to Fillmore, June 10, 1851, Serial 620, Doc. 59, 74-78. It will be observed that the date of this and of Aulick's instructions are the same, but what was here embodied in written form had been the substance of a conversation some days before.

<sup>109</sup> Nitobé, "American-Japanese Intercourse," 139; Paullin, *Negotiations of Naval Officers*, 246; Dennett, *Americans in Eastern Asia*, 252-253.



Eastern squadron, suggested the advisability of taking to Japan some shipwrecked sailors of that nation who were in San Francisco, using that occasion as an opportunity to open diplomatic discussions.<sup>110</sup> The suggestion was welcomed and Aulick was commissioned to make the attempt. He was given a letter to the emperor which perfectly corresponded with Glynn's suggestions in its simple and candid argument, its clear and dignified statement, and its friendly spirit, avoiding menace or superiority on the one hand, and weakness on the other. It made clear the change in physical conditions which created a new situation, and opened the way for the Japanese to yield something without being accused of inconsistency.<sup>111</sup> Aulick's instructions, likewise, were in the spirit of Glynn's suggestions. The entire absence of avowed political motive is noteworthy. There was nothing of censure for the treatment of Americans hitherto, and while tactful use was made of the proposed return of the Japanese mariners, it was not overdone.<sup>112</sup>

Aulick's mission was wrecked before he reached Japan as a result of a silly quarrel and certain misunderstandings, so the whole matter lay over until late

<sup>110</sup> This proposition was made May 9, 1851. Nitobé, *American-Japanese Intercourse*, 140; Paullin, *Negotiations of Naval Officers*, 246-247.

<sup>111</sup> Serial 620, Doc. 59, 82.

<sup>112</sup> Webster to Aulick, June 10, 1851, *ibid.*, 60-61; also MS. Inst. Sp. Miss., I, 318; credence, May 30, 1851, MS. Credences, III, 408.

in 1852.<sup>113</sup> To replace Aulick, who was relieved of duty as commander of the squadron, Matthew C. Perry was selected. The plans were much more elaborate. Perry had almost a year in which to study the matter, and he did study it with care.<sup>114</sup> Some time after the middle of 1852 he drew up a statement of his ideas, which he submitted to the Secretary of the Navy, by whom it was referred to the Department of State. The spirit and temper are rather different from those of Commander Glynn. Perry laid much more emphasis upon the treatment of American sailors in the past. "Such cruelty would not have been tolerated in the earliest ages, and if exercised by any European nation at the present time would rouse the indignation of the whole people of this country, and be a just cause for war." If they are civilized, such action is inexcusable. If they are barbarians, "then they should be treated accordingly, and be made to conform to the recognized law of nations."

Perry, moreover, without losing sight of the commercial side, saw more clearly than others the political aspects of the problem. "The tide of empire is gradually flowing westward, and for the next half-century the most prominent events of the world are to transpire in the Western Hemisphere, and especially in the Pacific Ocean. From the geographical position

<sup>113</sup> Paullin, *Negotiations of Naval Officers*, 248-250.

<sup>114</sup> F. L. Hawks, "Narrative of the Expedition . . . of Commodore M. C. Perry," Serial 802, 33 Cong. 2 Sess., H. Ex. Doc. 97, 77.

of the United States, and their rapidly growing commerce between the shores of the Pacific and China, and the Polynesian Islands, our people must naturally be drawn into the contest for empire, whether for good or for evil, and it will be wise to anticipate and prepare for events inevitable in themselves." The United States, Perry felt, was committed to the task, and its prestige was involved. "The World has assigned this duty to us. We have assumed the responsibility and undertaken the task, and cannot now hold back, without drawing upon ourselves ridicule and reproach." As the United States had been the first to suppress the tribute to the Mediterranean corsairs, it would be the one to bring "the Japanese to their senses." Perry, therefore, was for decisive action. "It is plain . . . that stern necessity makes it imperative on the United States to secure, 'peaceably if we can, forcibly if we must,' ports of refuge." He called for an adequate naval force. He emphasized that only with such backing would he assume the responsibility involved, and detailed the conditions which he regarded as essential to success.<sup>115</sup>

Such was the basis for Perry's mission. The whole was summed up in the communication from the Department of State to Secretary of the Navy Kennedy. "Recent events—the navigation of the ocean by steam; the acquisition and rapid settlement by this country of a vast territory on the Pacific; the discovery of gold in that region; the rapid communication estab-

<sup>115</sup> MS. Special Agent Bundle.

lished across the Isthmus which separates the two oceans,—have practically brought the countries of the East in closer proximity to our own,” and make the policy hitherto pursued by Japan no longer tolerable.<sup>116</sup>

Perry's instructions differed considerably in tone from those of Aulick. They were firmer, and definitely took into consideration what should be done if conciliatory deportment and reasoned argument failed of effect. In such circumstances Perry was to “change his tone and inform them with the most unequivocal terms that it is the determination of this government to insist, that hereafter all citizens or vessels of the United States that may be wrecked on their coasts, or driven by stress of weather into their harbors, shall, so long as they are compelled to remain there, be treated with humanity; and that if any acts of cruelty should hereafter be practiced upon citizens of this country, whether by the government or by the inhabitants of Japan, they will be severely chastised.”<sup>117</sup>

The government of the United States was not confident that Perry would succeed. The succession of failures and mishaps had been dishearteningly long. Even while Perry was busy at his task, provision was made for a new attempt, in case he should fail.

<sup>116</sup> Conrad, acting, to Kennedy, Nov. 5, 1852, MS. Inst. Sp. Miss., III, 1-15; Serial 751, 33 Cong. 2 Sess., Sen. Ex. Doc. 34, 2-9.

<sup>117</sup> Instructions to Perry and pertinent papers, MS. Inst. Sp. Miss., I, 343, 347, 349; none of his despatches are in the Department of State.

When, in November, 1853, Robert M. McLane was appointed commissioner to China, he was empowered, also, to renew the effort to make a commercial arrangement with Japan, if a fair occasion for doing so should offer.<sup>118</sup>

Beside his mission to Japan, Perry had another duty. On his way out, at Madeira, he wrote the Secretary of the Navy that in view of the possibility of delay or difficulty in getting ports in Japan opened to American ships, it would be wise to "establish places of rendezvous" in the Loo Choo islands, which were claimed by Japan, but the sovereignty over which was claimed also by China. Perry intended to deal with the inhabitants directly.<sup>119</sup> The authority which he asked was promptly accorded.<sup>120</sup>

In addition, Perry was given a roving commission, similar to that held by Edmund Roberts. He was given a number of blank "full powers" to use at his discretion. At about the same time a similar authority was conferred on Commander Cadwallader Ringgold. He was to serve in the Pacific and Indian oceans, and it "occurred to the President that in the execution of the duty assigned to you by the Navy Department . . . you may have occasion to visit countries or islands with the sovereigns of which it might be advantageous for the United States to have treaties

<sup>118</sup> MS. Precedent List of Special Agents, Department of State.

<sup>119</sup> Dec. 14, 1852, Serial 751, Doc. 34, 12.

<sup>120</sup> Everett to Perry, Feb. 15, 1853, *ibid.*, 14-15; MS. Inst. Sp. Miss., III, 22-24.

of friendship and commerce." He was, therefore, furnished with four full powers in blank, authorizing him to negotiate, conclude, and sign such treaties.<sup>121</sup>

Corea interested the United States in much the same way and for the same reasons as Japan, though to a less degree.<sup>122</sup> It was in the line of trade, and from time to time American vessels were wrecked upon its shores. The treatment accorded the crews was not very different from that which sailors had experienced in Japan. As early as 1845, the House of Representatives suggested the negotiation of a treaty; but no effective steps were taken. When, however, in 1866, an American vessel, the *General Sherman*, was wrecked and its crew killed, the naval officers on the Far East station undertook to investigate. The officer charged with the mission was Commander R. W. Shufeldt of the *Wachusett*. The result of the incident was a recommendation that the United States should make a treaty with Corea along the same lines, and by use of the same methods, as in the case of Japan.<sup>123</sup> Shufeldt's visit occurred in 1867. The next

<sup>121</sup> March 2, 1853, MS. Inst. Sp. Miss., III, 25-27: The suggestion that Ringgold have such powers came from the Navy Department, Secretary of the Navy to Secretary of State, March 1, 1853, MS. Misc. Letters; reports of his work came from Commissioner R. M. McLane, MS. Desp. China, IX; in the archives of the Navy Department the communications of Ringgold to the Secretary of the Navy are in a volume, Surveying Expedition, Behring Straits, North Pacific, and China Seas, from October, 1852, to January, 1855.

<sup>122</sup> See Dennett, *Americans in Eastern Asia*, Chap. XXIV.

<sup>123</sup> Low to Fish, July 6, 1871, For. Rel., 1871, 142; C. O.



year Captain Febiger, of the *Shenandoah*, sought further information, but was refused any intelligence on the ground that he did not come in obedience to the direct orders of the President.<sup>124</sup> This rather indicated that the Korean government was not firmly opposed to negotiation, an impression which was strengthened by a report to the effect that Korea was considering sending an embassy to the United States.

On the basis of this report the consul general at Shanghai, George F. Seward, recommended that an attempt be made to open negotiations.<sup>125</sup> Before his despatch, which was dated April 24, 1868, was sent, the Department of State had decided to act, and Seward was appointed a commissioner to negotiate with the Korean government.<sup>126</sup> Later the matter was committed to Frederick F. Low, minister to China, Seward, and Rear Admiral John Rodgers, who commanded the Far East squadron.<sup>127</sup> Seward did not accompany the mission, which met with difficulties, was fired on, and then undertook punitive measures.<sup>128</sup> Low, much impressed with the difficulties due to suspicion and hostility, advised that "no further efforts

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Paullin, "The Opening of Korea," *Political Science Quarterly*, XXV, 470-472.

<sup>124</sup> Low to Fish, loc. cit.

<sup>125</sup> Ibid.

<sup>126</sup> Jan. 27, 1868, Serial 3469, Doc. 40, 8.

<sup>127</sup> Low to Fish, Nov. 22, 1870, For. Rel., 1871, 73.

<sup>128</sup> Ibid., 111, 115, 116, 121, 124, 126; Richardson, *Messages and Papers*, VII, 145-146.



at conciliatory negotiation should be made, nor should mere demonstrations of force be attempted in the expectation that favorable results will follow." Either a decision should be made "to let Corea alone, and allow her to burn, pillage, destroy, and massacre all that come within her reach without question or demand for redress," or an expedition should be sent capable of breaking down and empowered to break down the barriers. Of these two policies Low was decidedly in favor of the latter, and he even suggested that the expedition might be an international one.<sup>129</sup>

Low's advice was not followed; the matter was left in abeyance for some years. In 1874, the chargé of the United States in China reported that a new king, of a new dynasty, had ascended the throne of Corea, one reputed to be more favorably disposed than his predecessor. This was followed by news two years later that Japan had made a treaty with Corea permitting trade and providing for the establishment of a permanent Japanese legation in Seoul. Interest was again aroused, and in April, 1878, Senator Sargent, of California, submitted a resolution suggesting that the President undertake negotiations. The resolution never came to a vote. In the same year, however, Shufeldt was sent to the Far East by the Navy Department, and with the approval of the Department of State he was ordered "to visit some port of Corea with the endeavor to reopen by peaceful measures

<sup>129</sup> Low to Fish, July 6, 1871, loc. cit.; see for a general account, Paullin, "Opening of Korea," 472-475.

negotiations with that government." Shufeldt had great difficulty in getting in touch with the king. The attempt to forward a letter through Corean officials was met with flat refusal, and an effort to transmit it through Japanese channels failed also, due in part, so Shufeldt thought, to failure on the part of Japan to act in perfect good faith. Shufeldt found in Li Hung Chang, viceroy of Chihli and superintendent of trade in China, a new hope for reaching the King of Korea, and on returning to Washington in 1880 asked authority to assist Li in organizing the Chinese navy and to make a treaty with Korea by means of Li's help. Secretary of State Blaine accepted the proposal, and Shufeldt was sent to China ostensibly as naval attaché, but secretly authorized to make the treaty and to work with Li. This was the origin of the mission which finally secured a treaty and led to the establishment of an American legation in Seoul.<sup>130</sup>

The making of treaties with the islands of the Pacific went on for two generations. In 1883 Great Britain and Germany made treaties with the king of the Tonga group. These treaties described the status of this group of islands in the same language used with regard to Samoa—they were "autonomous and neutral."<sup>131</sup> When, three years later, the situation in Samoa became acute, and Secretary Bayard sent out his former law partner, George H. Bates, to investi-

<sup>130</sup> This paragraph is based wholly on Paullin, "Opening of Korea," 476-484.

<sup>131</sup> Richardson, Messages and Papers, VIII, 536.

gate the situation there, he also invested Bates with a full power to make a treaty of amity, commerce, and navigation with the ruler of the Tonga group. The treaty was signed October 2, 1886, on board the *Mohican*, in Nukualofa harbor, and relations between Tonga and the United States were established thereby.<sup>132</sup>

The number of occasions upon which missions of this character could be used is necessarily limited by the fact that there is only a limited number of nations with which to open relations. Naturally enough, later instances would concern new states, out-of-the-way countries, or those with some peculiar habits or status. In 1903, Robert P. Skinner, a consul general, was appointed commissioner plenipotentiary to establish relations with Ethiopia and negotiate a treaty. He negotiated directly with "His Majesty Menelik II, King of Kings of Ethiopia," and succeeded in framing a treaty.<sup>133</sup> The last such agency occurred in 1906, when Henry White, ambassador to Italy, was empowered to negotiate an extradition treaty with the Republic of San Marino.<sup>134</sup>

It is clear from the foregoing cases that various circumstances have induced the President to employ special agents to open formal diplomatic relations between the United States and other nations. First, when it was necessary to settle some matter which was

<sup>132</sup> Haswell, *Treaties*, 1206.

<sup>133</sup> Malloy, *Treaties*, I, 466.

<sup>134</sup> *Ibid.*, II, 1598.

clearly preliminary in character, such as the grade of representative to be exchanged, an executive agent furnished the means of reaching an agreement. That was precisely the point involved in the early mission of Humphreys to Portugal, and in the mission of Todd to Colombia, a generation later. In the second place, a desire to protect the dignity of the United States has sometimes led the President to employ executive agents. Where success in an effort to open relations was not assured, the prestige of this country might be lowered if a formal embassy were sent and then failed. A mere executive agent did not involve the dignity of this government so deeply. This was an important factor in determining the method to be employed in negotiations with Turkey, with Japan, and with other Eastern countries. Third, there were some nations with which the United States did not desire to exchange regular diplomatic officers unless a satisfactory treaty could first be made. Someone must negotiate the treaty; an executive agent could readily be employed for that purpose. Nathaniel Niles' mission to Sardinia best illustrates agencies of this character.

In the fourth place, it seemed desirable to have treaty relationships with many countries to which no regular diplomatic official would subsequently be sent. Because of commercial intercourse, because of location upon strategic routes of trade, or for any one of a number of other reasons, it might be desirable to have a treaty of friendship and commerce. Such a

treaty would provide for consular representation, for the purchase of food and supplies, for the humane treatment of shipwrecked sailors, and for many other matters, without involving the establishment of an American legation. Edmund Roberts' missions, as well as those of Balestier and Ringgold, are instances of agencies based upon this motive. Perry's authority to negotiate with nations other than Japan is another illustration. The agencies of Pickett, Pendleton, and others in South America are of the same sort. Finally, it occasionally seemed desirable to employ an executive agent in place of a diplomatic officer in order to avoid the delay incident upon the establishment of a regularly constituted mission. A. Dudley Mann's agency to Switzerland furnishes a case in point; its purpose was to preclude the possibility that the delay incident to congressional action might prejudice the results of diplomacy.

## CHAPTER VI

### AGENTS TO COUNTRIES WITH WHICH THE UNITED STATES HAD BROKEN OFF RELATIONS

The second group of agents is that sent to countries with which the United States has broken off relations. This includes, of course, countries with which the United States is at war. It would be a contradiction in terms to speak of sending a minister or an ambassador, or any diplomatic officer, to a country with which relations were strained beyond the breaking point. Yet it has often been necessary to have some sort of communication with such powers. Contact can be maintained in four ways: first, by keeping open the embassy or legation after the head of it has retired, leaving a chargé to deal informally and unofficially with such matters as require action; second, through the good offices of a friendly state; third, by dealing with an informal agent sent by the other power to the United States; fourth, by sending an agent to the country with which we are having difficulty. All four of these methods have been employed in the course of our national history. Only the last is involved in the present study.

The first special agent under the Constitution was Gouverneur Morris. He was sent to a country with which we had broken diplomatic relations, in order to

prepare the way for their resumption. Washington on assuming office found American diplomacy in a bankrupt state. The old government had been nowhere so weak as in the conduct of foreign relations. Its difficulty in this field was similar to its difficulty in finance,—there was no way by which the states could be made to pursue a uniform and harmonious policy. The stipulations of the treaty of 1783 had not been fully lived up to by this country. Great Britain had performed what was to her interest and no more.

Four specific problems, each of first class importance, all in connection with our relations with Great Britain, faced Washington. The first was the detention by the British, in open defiance of the treaty, of the western posts. The second was indemnification for negroes carried off contrary to the stipulations of the treaty. The third was the lack of a treaty for the regulation of commerce between the two countries. The long habits of trade, as well as many other factors, were certain to make Great Britain our chief foreign market. This fact was sufficiently clear in England, as it was in America. And of this fact plans were made to take utmost advantage. American mercantile enterprise was to be made to bear whatever load it could possibly carry. Without any commercial treaty for its protection, it could be, and was, harshly discriminated against. Unless a treaty could be negotiated, the commercial development of America was bound to be hobbled. Fourth, and most important, there was no channel through which these matters



could be discussed.<sup>1</sup> After the treaty of peace Great Britain had proposed the exchange of ministers. On the basis of this proposal John Adams was sent by the United States.<sup>2</sup> But he was treated with a cold and studied incivility; no English minister was sent to this country in exchange; his efforts for a commercial arrangement were fruitless; his protests with regard to the nonfulfillment of the treaty stipulations by the British resulted only in unanswerable questions as to why the United States did not live up to the terms of the treaty on her part. In consequence, he set sail for home, April 20, 1788. The United States was left no means of communication with the nation with which, of all others, it must have dealings.

Washington recognized that his first diplomatic problem was to get into communication with Great Britain on these questions, but he came to his office with a keen sense of the dignity of the United States. He perceived that this country, if it sent a minister, would be in a position involving loss of prestige. The first thing to do was to assure himself that Great Britain would meet any advances half way. Precluded from the despatch of a minister, he turned to Gouverneur Morris and wrote, October 13, 1789, requesting him to serve as "a private agent," and "in that capacity, on the authority and credit of this letter, to converse with his Britannic Majesty's ministers" on the four important topics which needed to be dis-

<sup>1</sup> Washington Papers, XX, 340.

<sup>2</sup> MS. Foreign Letters, CXXI, 394.

cussed by the two governments.<sup>3</sup> Washington's motive for employing Morris was clearly a desire to move for the restoration of diplomatic relations, but in such a manner as to preserve the dignity of America intact.

For over half a century there was no further use of a special agent for precisely this purpose. Polk, on assuming the presidency, found relations with Mexico in a critical state. Tyler's action in signing the joint resolution providing for the annexation of Texas precipitated a discussion with the Mexican minister, who had entered a protest, March 6, 1845, which was speedily followed by a demand for his passports.<sup>4</sup> Meanwhile the position of the American minister in Mexico City was intolerable. He was cut off from official intercourse by the Mexican government. Polk, however jingoistic his campaign slogan, seems to have been a man of peace. He was ready to push to the limit, and occasionally, perhaps, to bluff beyond the limit. But he really desired to achieve his ends bloodlessly. Secretary of State Buchanan wrote Minister

<sup>3</sup> Washington, Works, ed. Sparks, X, 43. The employment of Morris was suggested by Hamilton. *Am. Jour. Int. Law*, XVIII, 466-467. But Jay was present at the conference with Washington where Morris's name was proposed. Bemis, *Jay's Treaty*, 47; and see *ibid.*, 79-81, for other matter on this mission. Morris's reports are in MS. Desp. France, III B. There is also material on the mission in the Washington Papers, in the Manuscripts Division of the Library of Congress. See *Am. State Papers, For. Rel.*, I, 121-127; MS. Foreign Letters, CXXI, 394-395, 425-426.

<sup>4</sup> Richardson, *Messages and Papers*, IV, 388.

Shannon that the President "did not believe that any point of honor can exist between the United States and Mexico which ought to prevent him from pursuing a friendly policy toward that republic."<sup>5</sup> Yet in the very first month of his administration he found all diplomatic intercourse suspended and the two countries drifting into war.

The rupture was a real disappointment to Polk. He disapproved Shannon's course, feeling that the minister had contributed to bringing the situation to such a pass. Disapproval of the minister, however, could not restore relations, and Shannon, having been cut off from official intercourse by Rejón, the Mexican minister of foreign relations, and his course having been disapproved by Polk, was in no position to be instrumental in bringing about a resumption of relations. It occurred to Polk, therefore, that the first thing he should do was to send to Mexico someone familiar with the situation in Washington and with the personnel of the Mexican administration. He seemed to have such a man in William S. Parrott, an American dentist, whose residence in Mexico had made him thoroughly familiar with the situation there. He was sent, March 28, 1845, to restore friendly relations, and to get assurances that an American minister would be received.<sup>6</sup> This was a

<sup>5</sup> March 29, 1845. Quoted, Rives, *United States and Mexico*, I, 702.

<sup>6</sup> Buchanan to Parrott, March 28, 1845, *Works of James Buchanan*, Comprising his Speeches, State Papers, and Private

question which could only be discussed unofficially and there was no alternative to the use of an executive agent.

Again, ten years after the close of the Mexican War, occasion arose for sending an agent to Mexico to smooth the way for a resumption of relations. Mexico was in the throes of revolution. Juarez and Miramon were struggling for control of the government. The country had descended into a state bordering on anarchy. The conservative government of Miramon held the capital, but it was unwilling and unable to protect American lives and property. Minister Forsyth urged action on the ground that no better situation would develop until the United States should "give striking evidence of their will and power to protect their citizens." "Severe chastisement is the only earthly remedy for our grievances." Instead of these drastic measures, the only action taken was to break off diplomatic relations.<sup>7</sup> Such a move, how-

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Correspondence, ed. J. B. Moore (Philadelphia, 1908-1911), VI, 133; MS. Inst. Sp. Miss., I, 215-218; despatches, April 2 (New York), April 19 (Vera Cruz), April 26 (Mexico City), Dec. 11, 1845, MS. Desp. Mexico, XII. References to his mission may be found in the despatches of Consul Black, July 3, 24, Oct. 18, 1845, MS. Consular Letters, Mexico City, VIII. See J. S. Reeves, *American Diplomacy under Tyler and Polk* (Baltimore, 1907), 107, for sidelight on his character. His payment as special agent is noted in Serial 481, 29 Cong. 1 Sess., H. Doc. 11, 29. He was subsequently nominated as secretary of legation. Sen. Ex. Jol., V, 9, 32.

<sup>7</sup> Dec. 6, 1858, Richardson, *Messages and Papers*, V, 513; see H. L. Wilson, "President Buchanan's Proposed Intervention in Mexico," *American Historical Review*, V, 689-690.

ever, has little effect upon a government like that of Miramon. Its effect belongs largely in the realm of moral pressure, to which such a government is scarcely subject.

President Buchanan recognized this fact and considered two possibilities. The first was "to take possession of a sufficient portion of the remote and unsettled territory of Mexico, to be held in pledge until our injuries shall be redressed and our just demands satisfied." The second was to enter into relations with Juarez, head of the constitutional government. Buchanan had some hope that if the constitutional party should prevail "they will be animated by a less unfriendly spirit and may grant that redress to American citizens which justice requires so far as they may possess the means."<sup>8</sup> On the principle that reprisals could be justified only if every other expedient had been tried, Buchanan determined to sound the Juarez government. Late in December, 1858, he despatched William M. Churchill to smooth the way for a reopening of diplomatic relations with Mexico through a minister accredited to Juarez.<sup>9</sup> It was, very clearly, work that could not be done by a regular official; only some sort of special agent could be sent.

Once more a period of more than fifty years intervened, and then difficulties with Venezuela led to the employment of a special agent. Castro, the virtual dictator of Venezuela, was accused by the Department

<sup>8</sup> Richardson, Messages and Papers, V, 513-514.

<sup>9</sup> Dec. 19, 1859, *ibid.*, 564.

of State of having "practically confiscated or destroyed all the substantial property interests of Americans in that country."<sup>10</sup> The discussion of cases made no substantial progress,<sup>11</sup> and after offers of arbitration upon the part of the United States had been cavalierly dealt with, the Department of State was convinced that a rupture of relations was the only course of action consistent with the dignity and interests of the United States. The American legation was taken over by the Brazilian chargé in Caracas, June, 1908, but John Brewer, legation clerk, remained in charge of the archives.<sup>12</sup> Six months later a change of administration in Venezuela smoothed the way for the re-establishment of relations, and William I. Buchanan was appointed high commissioner<sup>13</sup> "with full power to confer with the Government of Venezuela in all matters relating to the re-establishment of diplomatic relations between the United States and Venezuela."<sup>14</sup> Buchanan had had long experience in Latin America, and had again and again demonstrated his unusual qualifications for meeting difficult situations.<sup>15</sup> Under his expert guidance negotiations proceeded amicably;

<sup>10</sup> Root, Secretary of State, to Minister Russell, Feb. 28, 1907, For. Rel., 1908, 774.

<sup>11</sup> *Ibid.*, 774 ff.

<sup>12</sup> Root to Chargé Sleeper, June 13, 1908, *ibid.*, 820-821; for other correspondence, see *ibid.*, 821-830.

<sup>13</sup> See *ibid.*, 1909, 629.

<sup>14</sup> Root to Buchanan, Dec. 21, 1908, *ibid.*, 609-612.

<sup>15</sup> Am. Jour. Int. Law, IV, 160-163.

on February 13, 1909, a satisfactory protocol was signed, and Minister Russell returned to his post.<sup>16</sup>

The Great War furnished the next occasion for the employment of agents to countries with which the United States, though technically not at war, had broken relations. With Turkey, in particular, contact was maintained through agents of this character. The United States, in declaring war upon Germany, did not withdraw its embassy from Constantinople, and gave no evidence of an intention to do so. The Porte, however, broke off relations, April 20, 1917.<sup>17</sup> But war did not follow, and when, December 4, President Wilson recommended that Congress "immediately declare the United States in a state of war with Austria Hungary," he specifically recommended that such a declaration should not be levelled against Turkey. Admitting that the Ottoman Empire, like Austria, was simply a tool of Germany, and conceding that strict logic "would lead also to a declaration of war against Turkey," he held that immediate and practical considerations outweighed those of theory.<sup>18</sup> What these particular considerations were is left to conjecture. Doubtless they were many.

<sup>16</sup> Correspondence, Dec. 31, 1908,—Feb. 26, 1909, *For. Rel.*, 1909, 612-616; for protocol, see *ibid.*, 617-622.

<sup>17</sup> "Diplomatic Correspondence between the United States and Belligerent Governments relating to Neutral Commerce," *Am. Jour. Int. Law*, XI, Supp., 375.

<sup>18</sup> *Official Statements of War Aims and Peace Proposals*, December, 1916, to November, 1918, ed. J. B. Scott (Washington, 1921), 198.



It was probably regarded as unwise in a military sense for the United States to divert energy from the western front. There was no immediate and specific grievance, a fact which may have had some weight. Fears that American lives and property connected with philanthropic enterprises, and that lives and property of subject races would be endangered may also have had some influence.<sup>19</sup> It was suspected, moreover, that Germany would welcome such a declaration because it would tend to solidify her alliance and put an end to any wavering on the part of Turkey. Further, it was stated in Congress that the Department of State had hopes that the allied powers might secure a separate peace with Turkey and Bulgaria which an American declaration of war might jeopardize.<sup>20</sup>

The hopes of the Department of State could hardly have rested upon a mission said to have been undertaken by former Ambassador Morgenthau. He is said to have proposed to Mr. Balfour in April, 1917, that he go to the Palestine front, via Egypt, there to meet with Enver Pasha, with whom, as with other leaders of the Turks, he had formerly had close relations. After tentative arrangements had been made by Ambassador Elkus, who was detained in Constantinople until the end of May by an attack of typhus, Mr. Morgenthau left the United States in July. He

<sup>19</sup> *New York Times*, Dec. 17, 1917.

<sup>20</sup> *Ibid.*, Dec. 7, 1917.

never arrived at the Palestine front and the mission was abortive.<sup>21</sup>

When Turkey sought and obtained an armistice, in October, 1918, the United States made it evident that it would not resume relations before the allied powers concluded a treaty. Though the United States had not declared war, it asserted an important interest in the settlement. This point of view was definitely set out in a note published March 31, 1920. "While it is true that the United States of America was not at war with Turkey, yet it was at war with the principal allies of the country, and contributed to the defeat of the Turkish Government. For that reason, too, it is believed that it is the duty of this Government to make known its views and urge a solution which will be both just and lasting."<sup>22</sup> This statement of principle was made at a late date, but it represents with fair accuracy the attitude of the United States from the first.

President Wilson took a very active interest in the Near Eastern question. This was indicated by the

<sup>21</sup> This account is based upon an article by Frank Jowett, "Why We Did Not Declare War on Turkey," *Current History Magazine*, XIV, 989-991. The article may be accurate in its account of Mr. Morgenthau's mission; but it does not furnish an explanation why the United States did not declare war on Turkey. The reasons why we did not declare war on Turkey before our declaration of war on Austria are sufficiently obvious, and before the United States declared war on Austria, the mission of Mr. Morgenthau had been abandoned. Mr. Jowett's use of that mission, therefore, to explain why the United States did not declare war on Turkey seems to be invalid.

<sup>22</sup> *New York Times*, March 31, 1920.

sending of at least two missions of investigation and inquiry. One was the mission of Dr. Henry C. King and Mr. Charles R. Crane, who were appointed American members of an interallied commission on mandates in Turkey, in April, 1919.<sup>23</sup> Other nations which were expected to appoint members of the commission did not do so. Instead of being part of an interallied commission, therefore, it was as agents of President Wilson that the two Americans made their investigation.<sup>24</sup> The second mission was that of Major General Harbord. The British government had let its associates know that it planned to withdraw its forces from the Caucasus. When it became clear that the French were not going in, the question arose: In what sort of situation would the United States find itself involved if it accepted a mandate for Armenia? To lay the foundation for answering this question, General Harbord's mission was sent out, in August, with instructions to gather data, both political and military. The region to which they went was still legally Turkish territory. They were to get material on the basis of which agreements with Turkey might be predicated.<sup>25</sup>

<sup>23</sup> Springfield Republican, April 7, 1919.

<sup>24</sup> See *New York Times*, Index, for first three quarters of the year 1919; the service lasted from April to Sept., 1919, *Who's Who in America*, XI, 1602; their report was published, Dec. 2, 1922, *Editor and Publisher*, LXV, 1-26.

<sup>25</sup> The service lasted from Aug. 20 to Nov. 11, 1919, *Who's Who in America*, XIII, 1451; see *New York Times*, Aug. 9, 14, 15, Sept. 9, Oct. 7, 12, 24, 25, 1919; his report, with one appendix only, was published, Serial 7671, 66 Cong. 2 Sess., Sen. Doc. 266.

The United States did not send a plenipotentiary to assist in negotiating the treaty of Sèvres, though it was anxious to make its opinion felt in framing the instrument.<sup>26</sup> But, pending a final settlement, it was necessary to safeguard American interests in Turkey. In addition, therefore, to the agents mentioned, it was deemed expedient to have a commissioner at Constantinople, particularly as the allied powers each had such a representative there.<sup>27</sup> In August, 1919, Rear Admiral Mark L. Bristol, who, since January of that year, had been commanding American naval forces in Turkish waters, was made high commissioner.<sup>28</sup>

Before the United States could regularize its relations with Turkey, it was almost essential that the treaty of peace between Turkey and the allied powers should first be concluded. The principles governing the new treaty with the United States must inevitably be similar to those embodied in the allied treaty. American treaties with Turkey, from the very first, have been built upon European models. The long delay in the formation of the treaty of Sèvres, the difficulty in securing effective ratification, the nationalist movement, and the final collapse of the treaty,—these continued for several years the anomalous con-

<sup>26</sup> *New York Times*, Aug. 14, 1919.

<sup>27</sup> *Ibid.*, March 31, 1920.

<sup>28</sup> See *Who's Who in America*, XIII, 516; Register of the Department of State, 1924, 101.

dition in the relations of the countries involved, and required the continuance of a commissioner.<sup>29</sup>

With the final breakdown of the treaty of Sèvres and the effort to negotiate a new agreement at Lausanne, the United States altered its policy somewhat. Instead of leaving the negotiation wholly in the hands of European powers, the United States attended the sessions of the Lausanne conferences, in 1922 and 1923, by means of observers, who played an active rôle in facilitating negotiations. Richard Washburn Child, ambassador to Italy, Joseph C. Grew, minister to Switzerland, and Admiral Bristol were the observers at the first conference.<sup>30</sup> At the second conference, Mr. Grew represented the United States, and his good offices were of material value in bringing about an accord between the Turkish nationalists and the allied governments.<sup>31</sup> When the European treaty had been concluded, it was necessary that one should be framed by the United States, and Mr. Grew was given plenipotentiary powers for that purpose, and served as an executive agent in negotiating a treaty with the new Turkish government, at Lausanne.<sup>32</sup>

Even when the treaty had been signed, relations

<sup>29</sup> The British high commissioner was also a naval officer, Admiral de Robeck. *Current History*, XII, 63.

<sup>30</sup> C. H. Levermore, *Third Year Book of the League of Nations* (New York, 1923), 348, 363, 389, 391, 394, 401; *New York Times*, Nov. 2, 1922,—Feb. 8, 1923, *passim*.

<sup>31</sup> *Ibid.*, April 14,—July 24, 1923, *passim*.

<sup>32</sup> *Ibid.*, May 28,—Aug. 8, 1923, *passim*.

could not be reestablished upon a regular footing until the process of ratification was complete. The failure of the Senate to consent to the ratification postponed the despatch of a minister or ambassador, and Admiral Bristol continued to act as an executive agent in charge of American interests. For eight years, therefore, an executive agent bridged the gap between the rupture of relations and the final restoration of normal friendly contact.<sup>33</sup> The work in this instance required a staff comparable to that of an embassy or a legation, and there were consular functions to be performed also. The principal members of this staff were drawn in part from the ranks of the regular foreign service officers, and were called "delegates" to the high commission, or "commissioners."<sup>34</sup> By whatever title they were known, they were all executive agents.

The agents noted thus far in this chapter were sent to countries with which the United States was at

<sup>33</sup> Official relations were reestablished without a treaty when Joseph C. Grew was appointed ambassador to Turkey in May, 1927. *New York Times*, May 19, 1927. The nomination was confirmed by the Senate, April 13, 1928, although there was some discussion to the effect that the Department of State should not have resumed diplomatic relations in view of the fact that the Lausanne treaty had not been ratified, Cong. Record, 70 Cong. 1 Sess., LXIX, 6396, 6639. There are no sound constitutional foundations for such an objection inasmuch as the United States has maintained relations without formal treaties. Furthermore, the United States had not been at war with Turkey.

<sup>34</sup> See, e. g., G. B. Ravndal, Register of the Department of State, 1924, 179; M. B. Barnes, *ibid.*, 94; R. A. W. Treat, *ibid.*, 1927, 200.



peace, but with which, for one reason or another, diplomatic relations did not exist. There is another group, closely related to these,—agents sent to countries with which the United States was actually at war, sent in order that they might make tentative or definitive moves toward peace. These latter clearly belong in the class of agents sent to a country with which the United States had no diplomatic relations to prepare the way for renewal of such contact.

The first such agent came very early in the history of the government. In a report dated December 28, 1790, Thomas Jefferson pointed out that American navigation in the Mediterranean had been completely suspended, the sole obstacle to commerce being the unprovoked war of Algiers. The only remedy was "to bring that war to an end or to palliate its effects."<sup>35</sup> The Algerines held a number of captives, some of whom had been taken as early as 1785. Efforts to gain release for these prisoners had been made by Jefferson through the Mathurians, a religious order devoted to the recovery of Christians who had fallen into the hands of the infidel. His purpose in this was to disguise the interest of the United States in the release of the captives. It was hoped "by that semblance of neglect, to reduce the demands of the Algerines to such a price as might make it hereafter less their interest to pursue our citizens than any others." This piece of Yankee shrewdness was defeated by the over-zealous activities of various American agents, so that

<sup>35</sup> Am. State Papers, For. Rel., I, 104.



the Algerines advanced the ransom price to the highest ever demanded from any nation.

Such was the situation inherited by the new government.<sup>36</sup> Washington presented the matter to the Senate, and put before it definite propositions, to which he asked assent in advance of negotiation. In reply, the Senate agreed to approve a treaty of peace "at an expense not exceeding forty thousand dollars, paid at the signature, and a sum, not exceeding twenty-five thousand dollars, to be paid annually afterwards, during the continuance of the treaty." They also agreed to approve a treaty of ransom.<sup>37</sup> An act was passed appropriating fifty thousand dollars.<sup>38</sup>

With the utmost secrecy, only the President, Secretary of State, and Thomas Pinckney, who was going out as minister to London, being cognizant of the matter, John Paul Jones was instructed to conduct the negotiation. The Senate was in recess, having adjourned May 8, 1792.<sup>39</sup> Jones was given three commissions, all made out in Jefferson's own hand, one to negotiate peace, and one for ransom. "To these is added a commission to you as consul for the United States at Algiers, on the possibility that it might be useful for you to remain there till the ratification of the treaties shall be returned from hence." There

<sup>36</sup> Jefferson to Jones, June 1, 1792, *Am. State Papers, For. Rel.*, I, 290.

<sup>37</sup> May 8, 1792, *ibid.*, 136, 290.

<sup>38</sup> *Ibid.*, 290.

<sup>39</sup> *Sen. Ex. Jol.*, I, 124.

follows the further remark, "These commissions being issued during the recess of the Senate, are in force, by the Constitution, only till the next session of the Senate; but their renewal then, is so much a matter of course and of necessity, that you may consider that as certain and proceed without interruption. I have not mentioned this in the commission, because it is, in all cases, surplusage, and because it might be difficult of explanation to those to whom you are addressed."<sup>40</sup>

The clear inference from the passage just quoted is that Jones does not belong in the class of executive agents. But other facts weaken, if they do not entirely destroy, the inference. It is clear that on June 1, 1792, Jefferson did not regard Jones as an executive agent; it is not at all clear that he did not so regard him some months later. The reasons are as follows: Pinckney, on his arrival in London, learned that Jones was dead.<sup>41</sup> It is impossible to tell with certainty, therefore, whether Jones' name would have been sent in to the Senate, for it did not assemble until November 5, 1792.

This much, however, is certain: That Thomas Barclay had been designated as Jones' alternate on June 11, 1792, that Jefferson knew him to be exercising

<sup>40</sup> Jefferson to Jones, *loc. cit.*

<sup>41</sup> Jones died in Paris, July 18, 1792. Jefferson learned of Jones's death, apparently, from Pinckney's letter of Aug. 7. which arrived Oct. 6. Jefferson to Pinckney, Oct. 12, 1792, Jefferson, Writings, VI, 117-118.

the functions of commissioner, proceeding in every respect as if his name stood in each of the commissions in place of that of Jones, and that there could be no expectation that he would complete his mission before the Senate adjourned. Yet no nomination of Barclay as commissioner or consul to Algiers was sent to the Senate.<sup>42</sup> These facts are perfectly decisive evidence that whatever may have been Jefferson's opinion in June, 1792, or his purpose in the matter of nominating Jones, he did not regard the nomination of a commissioner, in the person of Barclay, as necessary. Barclay was, therefore, an executive agent despatched to a country with which the United States was at war to treat for peace and the ransom of captives.<sup>43</sup>

The business, long delayed through mischance, was, after Barclay's death, confided to David Humphreys, minister at Lisbon. He was given credentials similar to those sent to Admiral Jones, and was to act under the same instructions. He was also furnished with a secretary in the person of Captain Nathaniel Cutting.

<sup>42</sup> Washington to Barclay, June 11, 1792, *Am. State Papers*, *For. Rel.*, I, 292-293; Jefferson to Pinckney, *loc. cit.*; Pinckney to Jefferson, Dec. 13, 1792, *Am. State Papers*, *For. Rel.*, I, 293; Jefferson to Barclay, Nov. 14, 1792, *ibid.*; *Sen. Ex. Jol.*, I.

<sup>43</sup> Barclay died in Lisbon, Jan. 19, 1793. But this fact was not known to Jefferson until March 15, fourteen days after the adjournment of the Senate. *Am. State Papers*, *For. Rel.*, I, 293; *Sen. Ex. Jol.*, I, 139. Barclay's correspondence is in *MS. Desp. Cadiz*, I; there are seven despatches, five numbered, and two unnumbered. Humphreys, minister to Portugal, referred extensively to Barclay in his despatches, *MS. Desp. Portugal*, III.

Their appointments, made in March during the recess of the Senate, were not communicated to that body when it reconvened in December.<sup>44</sup> These facts are further evidence that, whatever the opinion of Jefferson in June, 1792, by 1793 the business was regarded as "executive altogether."

Matters did not move along speedily, by any means, after the task was consigned to Humphreys. A truce with Holland and Portugal relieved the pressure upon the Algerines and made them less disposed to peaceful overtures from the United States, and so the business hung fire.<sup>45</sup> On July 19, 1794, Randolph instructed Humphreys that he was "again charged with this important interest of our country," eight hundred thousand dollars were made available for the business of his mission, and he was given a free hand to go himself or to use some other person as his deputy.<sup>46</sup> Still nothing definite was achieved, but through the activities of the brother of the Swedish consul, Humphreys was informed of "nearly the ultimatum" upon which the Dey would insist.<sup>47</sup> As a result of this approach

<sup>44</sup> Jefferson to Pinckney, March 20, 1793, Am. State Papers, For. Rel., I, 293; Jefferson to Humphreys, March 21, 30, 1793, *ibid.*, 294; Jefferson to Cutting, March 31, 1793, *ibid.*; Sen. Ex. Jol., I, 140 ff.

<sup>45</sup> Am. State Papers, For. Rel., I, 295.

<sup>46</sup> Randolph to Humphreys, July 19, 1794, MS. Inst. U. S. Mins., II, 114-117; *id.* to *id.*, Aug. 25, 1794, *ibid.*, 152-157; Am. State Papers, For. Rel., I, 529.

<sup>47</sup> Humphreys to Randolph, Sept. 17, 1794, *ibid.*; despatches from Humphreys with reference to this employment, MS. Desp. Portugal, III, IV; MS. Desp. Spain, III.

to definite information, Humphreys was again instructed to make a treaty of peace on the basis proposed.<sup>48</sup> A few months later he was specially authorized to use either Joseph Donaldson or Pierre Eric Skjoldebrand, or both, as his deputies, if he saw fit.<sup>49</sup> In May, 1795, he did appoint Donaldson, who went to Algiers and concluded a treaty in September.<sup>50</sup>

Meanwhile Humphreys had been in Paris to confer with Monroe and enlist the sympathy and aid of France. When, July 28, assurances of French support were received, Humphreys and Monroe agreed that Joel Barlow should be employed, because "being a citizen of France as well as of the United States, and going to Algiers under the patronage of the French government, he might be very useful in obviating present and preventing future difficulties."<sup>51</sup> Before Barlow was ready to start, news was received of the conclusion of a treaty by Donaldson, but Monroe and Barlow thought it expedient that Barlow should go to Algiers nevertheless, an opinion in which Humphreys, who had left Paris, concurred.<sup>52</sup> Barlow

<sup>48</sup> Nov. 21, 1794, Haswell, *Treaties*, 1245.

<sup>49</sup> Randolph to Humphreys, March 28, April 4, 1795, *Am. State Papers, For. Rel.*, I, 529. Skjoldebrand declined to serve in a letter to Humphreys, Aug. 13, 1795, *MS. Desp. Algiers*, III.

<sup>50</sup> *Cong. Debates*, 21 Cong. 2 Sess., VII, 254, 298; *MS. Desp. Spain*, III; *MS. Desp. Algiers*, I, II.

<sup>51</sup> Pickering to Humphreys, June 18, 1796, *MS. Inst. U. S. Mins.*, III, 186-189. This opinion, attributed to Washington, shows the motive for the choice.

<sup>52</sup> *Id.* to *id.*, Jan. 23, 1796, *ibid.*, 98-99; Pickering to President, Jan. 6, 1797, *Am. State Papers, For. Rel.*, I, 553.

reached Alicante in February, 1796, and Algiers, March 5.<sup>53</sup> Thereafter he was engaged for some months in an effort, with Donaldson, to save the treaty from shipwreck because of financial difficulties.<sup>54</sup> The circumstances of the negotiation of peace with Tunis and Tripoli were similar in character. Barlow, to whom powers had been given by Humphreys, authorized Joseph Etienne Famin, a French citizen, and Captain O'Brien to conduct the negotiation<sup>55</sup> with Tunis. The treaty was signed by Famin in August, 1797, and was countersigned by Humphreys, November 14, 1797.<sup>56</sup>

Peace with the Barbary states was always in jeopardy. The peace with Tripoli, negotiated by Barlow in November, 1796, was short lived. As early as 1800 fresh demands were made upon the United States, and in a manner so peremptory and in a tone so contemptuous that there was no recourse save war.<sup>57</sup>

<sup>53</sup> *Ibid.*, 555. There is an error in the notes in Haswell, *Treaties*, 1245, where it is said Barlow reached Algiers, Sept. 5, 1795. He was in Paris on that date.

<sup>54</sup> Pickering to Barlow, Dec. 3, 1796, MS. Inst. U. S. Mins., III, 305-309; Pickering to President, *loc. cit.*; Barlow and Donaldson to Pickering, April 5, 1796, Am. State Papers, For. Rel., I, 554-555; other material, MS. Desp. Algiers, I, II, III; MS. Desp. Spain, III, IV.

<sup>55</sup> Barlow to Famin, May 22, 1796, MS. Desp. Algiers, II; Humphreys to Secretary of State, July 16, 1796, MS. Desp. Spain, III.

<sup>56</sup> The correspondence, voluminous in character, is in MS. Desp. Algiers, II.

<sup>57</sup> Moore, *Digest*, V, 396.



After naval activity had done its part in making the pirate state amenable to overtures, Tobias Lear, consul at Algiers, was appointed an agent to make peace with Tripoli. Appointed July 14, 1803, he succeeded in securing a treaty of peace June 4, 1805.<sup>58</sup> On the conclusion of his Tripolitan mission, he proceeded to Tunis for a brief period, and then returned to his post in Algiers. In January, 1807, he was again in Tunis and reached an agreement with that power, January 21, 1807.<sup>59</sup>

The Barbary states furnished, also, the next occasion for the use of executive agents to a country with which the United States was at war. After the War of 1812 with Great Britain was concluded, the attention of the United States government was centered on the hostile activities of Algiers. Consequently, Madison recommended that Congress declare war on that power.<sup>60</sup> After the declaration of the existence of a

<sup>58</sup> Secretary of State to Lear, July 14, 1803, MS. Desp. to Consuls, I, 169. Lear's correspondence is in MS. Desp. Algiers, VII. It begins with a letter, Jan. 20, 1803, to Secretary of State. Lear was then in Washington. He reached Algiers Nov. 18, 1803, Lear to Secretary of State, No. 3, Dec. 2, 1803. Sept. 15, 1804, he left Algiers to be within easier communication with Tripoli, and wrote from Malta, No. 9, Nov. 3, 1804. His report of the final negotiations, in which the Spanish and Danish consuls acted as intermediaries, is in No. 10, July 5, 1805.

<sup>59</sup> The instructions covering this mission are also in MS. Desp. to Consuls, I, and the reports of Lear in MS. Desp. Algiers, VII. The report of the final negotiations and agreement is dated Jan. 25, 1807.

<sup>60</sup> Feb. 23, 1815, Richardson, Messages and Papers, I, 554.



state of war, plans were made for negotiating peace. The employment of force and the negotiation of peace were conceived as really one operation. The Algerines understood the language of force better than any other. Consequently, two naval officers, Commodores Decatur and Bainbridge, were associated with a civilian, William Shaler, in a commission to negotiate peace.

The chronology of their mission is such that it is impossible to determine absolutely whether these men were regarded as executive agents, or whether the administration intended to send their names to the Senate. They were appointed in April, 1815, during a recess, and successfully completed their labors in time to have the report reach Washington shortly before the Senate reconvened.<sup>61</sup> Under these circumstances there was no need for sending the names to the Senate, whatever the original intention may have been. The only evidence bearing upon the point is to be found in the fact that the instructions did not mention their appointments as being merely for the recess. Usually when a recess commission was given, the accompanying instructions explained the significance of that sort of commission and pointed out its limitations. The instructions to these men were silent on the point. The argument from silence cannot be regarded as at all decisive in the circumstances of this case, but it is entitled to some weight.<sup>62</sup>

<sup>61</sup> Sen. Ex. Jol., II, 628; III, 3; Monroe to Decatur, Dec. 5, 1815, MS. Inst. U. S. Mins., VIII, 12-13.

<sup>62</sup> Monroe to Shaler, Decatur, and Bainbridge, April 10, 1815,

The next war time mission in the interests of peace has many elements of obscurity, but none whatever as to whether or not the agent was executive. It is the mission of Moses Y. Beach to Mexico in 1846. Polk, throughout the whole Mexican difficulty, showed an inclination to use every means possible to reduce the amount of force which he must employ. He had made strenuous efforts to avoid war, and after its declaration he set in train many schemes to bring a speedy end to the armed struggle. Beach, the proprietor and editor of the *New York Sun*, was in Washington in November, 1846, and had several interviews with Secretary of State Buchanan and one with President Polk. "He was then on the eve of leaving for Mexico on private business, but from his intimacy with General Almonte expressed the opinion that he could exert a favourable influence on him and other leading men in Mexico, with a view to the restoration of peace."<sup>63</sup> The President having been "induced" to believe him, Buchanan instructed him, November 21, 1846: "The President, . . . reposing full confidence

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ibid., VII, 393-397; Monroe to Shaler, May 12, 1815, ibid., 406-407. Reports and correspondence are in MS. Desp. Algiers, IX. Some of the correspondence, notably a letter from Shaler and Decatur to the Dey of Algiers, June 29, 1815, relative to their readiness to negotiate peace, and a letter of Decatur to Secretary of State, Feb. 9, 1816, are not on file in Department of State. See Am. State Papers, For. Rel., IV, 7; Sept. 4, 1816, MS. Inst. U. S. Mins., VIII. Credences for these commissioners are in MS. Credences, I.

<sup>63</sup> Wed., April 14, 1847, Polk, Diary, II, 476.

in your patriotism, ability, and discretion, has thought proper to appoint you as a confidential agent to the Republic of Mexico. You are well aware that the President had resorted to every honorable means to avoid the existing war; and whilst prosecuting it with vigor, he has been anxious ever since to make peace on just and honorable terms.”<sup>64</sup>

Beach was informed “confidentially of the terms on which we would treat, . . . but was not clothed with any Diplomatic powers. The object of constituting him a secret agent was that he might collect and furnish useful information to his Government. He may misconstrue his authority and it may be possible that he may induce the Mexican rulers, if they are reduced to great straits by the pressure of the war, upon the production to them of the letter of the Secretary of State making him an agent of the Government, to make a Treaty with him. It is clearly inferred from his letter that he will make a Treaty with them if he can. Should he do so, and it is a good one, I will waive his authority to make it, and submit it to the Senate for ratification. It will be a good joke if he should assume the authority and take the country by surprise and make a Treaty. Mr. Buchanan’s strong impression is that he may do so.” This interesting emissary was despatched during war time, not to make peace, but to open the road to peace and resumption of relations.<sup>65</sup>

<sup>64</sup> MS. Inst. Sp. Miss., I, 257.

<sup>65</sup> Polk, Diary, loc. cit. For report, June 4, 1847, see MS. Special Agent Bundle.

Another illustration of Benton's remark that "it is impossible to conceive of an administration less war-like, or more intriguing, than that of Mr. Polk,"<sup>66</sup> is the mission of Alexander Slidell Mackenzie in 1846. Beach was sounding out the situation in Mexico. But there was a center of lively diplomatic interest outside of Mexico, for Santa Anna, now an exile in Havana, was conspiring to return to power. He had already been in touch with the administration through Colonel Atocha, a naturalized American citizen who was sent out of Mexico City early in 1845 on the ground that he was a friend of Santa Anna and his financial agent.<sup>67</sup> This precious adventurer had been in Washington in February, 1846, telling of Santa Anna's attitude and plans.<sup>68</sup> While Polk did not fully trust him, he was sufficiently impressed to wish to know more of the possibilities of such a connection.

Indeed, Polk had reasonably confident expectations that Santa Anna's return would facilitate peace-making.<sup>69</sup> There was, of course, no possibility of official intercourse with a political exile. There was too great hazard in dealing with Santa Anna to allow

<sup>66</sup> T. H. Benton, *Thirty Years' View, a History of the Working of the American Government for Thirty Years, 1820-1850* (New York, 1897), II, 680.

<sup>67</sup> A. R. Hasse, *Index to United States Documents Relating to Foreign Affairs, 1828-1861* (Washington, 1914-1921), I, 76; Moore, *Digest*, IV, 97; Moore, *Arbitrations*, II, 1264.

<sup>68</sup> Polk, *Diary*, I, 223-233.

<sup>69</sup> Richardson, *Messages and Papers*, IV, 491-492.

of any project being committed to paper. Polk, therefore, selected Mackenzie, a naval officer, for whom fluent command of Spanish seems to have been an important recommendation, and instructed him verbally "to ascertain in a prudent way what Santa Anna's views were in regard to peace with the United States, and whether if restored to Mexico, there was a reasonable prospect that he would make peace."<sup>70</sup> This was an extremely informal agency; the circumstances compelled it to be such.<sup>71</sup>

Even before Mackenzie went to Havana, the government of the United States showed interest in the movements and the sentiments of Santa Anna. William Linn Brown went to Cuba early in 1846, and Secretary of State Buchanan "suggested that a few lines on passing events . . . would be acceptable." On the basis of that and possibly some other vague verbal

<sup>70</sup> Polk, *Diary*, IV, 290. The correspondence of Mackenzie is not on file in Department of State. A letter of Mackenzie to Polk, June 7, 1846, giving an account of his interview with Santa Anna, was published in full in Reeves, *Diplomacy under Tyler and Polk*, 299-308. The Polk Papers, Manuscripts Division, Library of Congress, contain a six page letter from Mackenzie to Buchanan, July 11, 1846, urging assistance to Santa Anna, and giving his reasons for feeling that Santa Anna was to be trusted. There is also a letter, Mackenzie to Buchanan, from Tarrytown, N. Y., Aug. 15, 1846, enclosing "the original copy of Santa Anna's note," which was reproduced in the letter to Polk printed by Reeves.

<sup>71</sup> For accounts of this agency, see Rives, *United States and Mexico*, II, 228-236; Reeves, *Diplomacy under Tyler and Polk*, 298-308; J. H. Smith, *The War with Mexico* (New York, 1919), I, 202-203.

suggestion, Brown interested himself in the relations between the United States and Mexico.<sup>72</sup> It was believed in Havana that Brown carried proposals to Santa Anna from the American government.<sup>73</sup> In any event, Brown was in direct communication with Santa Anna, or claimed to be,<sup>74</sup> but no important consequences seem to have followed. Indeed, Brown's offer to kidnap Santa Anna and deliver him to the American authorities was not accepted, and the permission for Santa Anna to enter Mexico through the American blockade ran counter to the whole tenor of Brown's advice.

The missions of Beach, Brown, and Mackenzie were certainly extraordinary. The fourth mission which Polk sent—this one to make peace—was in many respects still more unusual. News of the capture of Vera Cruz and of the castle of San Juan de Ulloa reached the President April 10, 1847. Later, on the same day, in cabinet meeting, the matter of sending a commissioner to make peace was discussed. The proposal to despatch an important man was negatived on purely political grounds. "Such is the jealousy of the different factions of the Democratic party in reference to the next Presidential election towards each other

<sup>72</sup> Brown to Buchanan, May 25, 1846, MS. Misc. Letters.

<sup>73</sup> Consul Campbell to Buchanan, May 25, 1846, MS. Desp. Havana, XXI. This letter is cited in Smith, *War with Mexico*, I, 479, n. 37, but the letter from Brown to Buchanan was not discovered by Smith.

<sup>74</sup> Brown to Buchanan, loc. cit.

that it is impossible to appoint any prominent man or men without giving extensive dissatisfaction to others and thus jeopardizing the ratification of any treaty they might make.”<sup>75</sup>

The second embarrassment arose from the refusal of the Mexicans to agree to appoint commissioners. Any commissioner who went from Washington, therefore, would have to “attend the headquarters of the army for an indefinite period of time and with no assurance whether the Mexican authorities would agree to negotiate.”<sup>76</sup> This made it undesirable for the Secretary of State, whom Polk desired as sole commissioner, to undertake the mission. Moreover, it would be practically impossible for the Secretary of State to act secretly. And secrecy was vital to Polk’s plan, partly because if it were known, the opposition party might bedevil the negotiation, and partly because, there being no assurance Mexico would treat, the United States could not afford to make an overture only to have it refused.

After much discussion, it was determined to send Nicholas P. Trist. He was chief clerk of the Department of State, “perfectly familiar with the Spanish character and language,” and thoroughly conversant with the diplomacy of the war. Despite one or two incidents in his career that were not strongly commendatory of his character, he was regarded as wholly

<sup>75</sup> April 10, 1847, Polk, *Diary*, II, 466.

<sup>76</sup> *Ibid.*



trustworthy and eminently discreet.<sup>77</sup> It was not expected that Trist would pursue the course he did, or exercise the powers, in some respects, which he did exercise. Polk noted in his diary that Trist was to carry a *project* "which he should be authorized to tender to the Mexican Government, and to conclude [a treaty] with them if they would accept it; but that if they would not accept it, but would agree to appoint commissioners to negotiate, that Mr. Trist should, in that event, report the fact to his Government, when Mr. Buchanan could go out as the commissioner."<sup>78</sup>

The long period of freedom from external war which elapsed between the Mexican and the Spanish wars precluded the use of executive agents to deal with countries with which the United States was at war. When intimations were received in 1898 that Spain was ready to make peace, they did not come through an American agent but through the French ambassador to the United States, M. Cambon, who had

<sup>77</sup> See L. M. Sears, "Nicholas P. Trist, a Diplomat with Ideas," *Mississippi Valley Hist. Rev.*, XI, 85-98.

<sup>78</sup> Polk, *Diary*, II, 467; and see *ibid.*, 471-472. Trist's instructions, however, gave him more latitude than would be indicated by this passage. His credence, power, and commission, April 15, 1847, are in MS. *Credences*, III. Instructions are in MS. *Inst. Mexico*, XVI: No. 1, April 15, 1847, 45-54; No. 2, June 14, 1847, 62; No. 3, July 13, 1847, 65; No. 4, July 19, 1847, 72; No. 5 (recall), Oct. 6, 1847, 75; No. 6, Oct. 25, 1847, 79; No. 7, Dec. 31, 1847, 83. Trist's papers are in the Manuscripts Division, Library of Congress. There are 29 despatches, and many enclosures, in Department of State, MS. *Desp. Mexico*, XIV. They begin April 15, 1847, and end Feb. 12, 1848.

charge of Spanish interests in America during the war. The preliminary peace protocol was signed by the Secretary of State on behalf of the United States, and by the French ambassador on behalf of Spain. The protocol provided that each nation should appoint not more than five commissioners to frame the definitive treaty.

President McKinley named the Secretary of State, William R. Day, as the head of the mission, and he resigned his office upon accepting the post. Perhaps, the precedent set by the Gallatin case at the close of the War of 1812 was in his mind, but it was not followed when, at the end of the Great War, Secretary Lansing was appointed a commissioner. In addition to Day, there were Whitelaw Reid, and three Senators, Cushman K. Davis, of Minnesota, William P. Frye, of Maine, and George Gray, of Delaware. All three were members of the Senate committee on foreign relations, the first two being of the majority party, the third of the minority. These men were appointed during a recess of the Senate, and had not completed their duties when the session began, but no nominations were sent to the Senate.<sup>79</sup> This mission is one of great importance and interest because it involved the use of Senators as agents of the President, a prac-

<sup>79</sup> Sen. Ex. Jol., XXXI. The Senate met Dec. 5, 1898; the treaty was signed Dec. 10. Of course, even if they had been regarded as "recess appointees," their commissions would not have expired until the end of the session of the Senate which began Dec. 5. The five commissioners were assisted by two secretaries and thirteen attachés. MS. Special Agent Vol., III.

tice largely employed by McKinley and one which led to vigorous protest in the Senate.

By far the most important use of executive agents to prepare for peace belongs to the period of the Great War. It is a fact that most American treaties of peace bear the signatures of executive agents.<sup>80</sup> But before the Great War the problem was relatively simple. In each case only two nations were involved, and the matters to be settled were comparatively small territorial and political issues. The problem of peace in 1918 was enormously complicated. All the great powers were involved and many of the smaller. The questions at issue touched the life of peoples everywhere. It was as though a new constitution were to be drawn for the modern world. The problem was not merely one for negotiation, but even more one of investigation and of administration. For these tasks the existing foreign service of the United States was wholly inadequate in point of numbers and in the matter of training. Consequently executive agents were employed upon a scale which dwarfed all previous records.

A striking and important manifestation of this sort was the creation, by executive appointment, of the

<sup>80</sup> The treaty of Ghent which followed the War of 1812 was signed by commissioners nominated to the Senate. See above, 187, 212 ff. William Shaler was attached to the commission in February, 1814, but his name was not submitted to the Senate. For material concerning this mission, see Shaler to Monroe, Aug. 20, 1814, March 5, 1815, MS. Special Agent Bundle; "Papers of James A. Bayard," 256, 283-284, 285.

"Inquiry." In September, 1917, President Wilson appointed Edward M. House the head of a committee to gather data for the use of the peace conference. The "Inquiry," as it came to be known, had, at one time, as many as one hundred and fifty persons, besides assistants and clerks. It conducted investigations upon a tremendous range of topics, and "huge cases, amounting to carloads of books, maps, and reports, were taken to Paris with the President's party on the George Washington."<sup>81</sup>

The American commission to negotiate peace was composed, aside from the President, of executive agents. Secretary of State Lansing did not attend in his official capacity, but was separately appointed and commissioned. The Senate was in session while the commissioners were being selected by the President, and his choice was determined and the appointments were made by Mr. Wilson in the midst of an active discussion of the power of the executive in the premises.<sup>82</sup> The four members of the commission—Robert Lansing, Edward M. House, Henry White, and General Tasker Bliss—were attended by hundreds of experts, assistants, clerks, and stenographers, so that the peace commission personnel abroad was nearly equal in size to that of the Department of State at home. The whole structure rested exclusively upon executive authority.

<sup>81</sup> R. S. Baker, *Woodrow Wilson and World Settlement* (New York, 1922), I, 108-109; C. H. Haskins and R. Lord, *Some Problems of the Peace Conference* (Cambridge, 1920), 23.

<sup>82</sup> *New York Times*, Nov. 17, 24, 25, 30, Dec. 1, 5, 1918.

From the peace commission, as from a parent stock, there branched other commissions seemingly innumerable, and with many sorts of functions. Some were sent to investigate conditions in the enemy countries; they were to gather data, but had no diplomatic powers. Such a mission, headed by Professor A. C. Coolidge, was sent to Austria-Hungary to study the social, political, and economic conditions. Headquarters were established in Vienna, with subagencies in Prague, Budapest, Agram, and elsewhere.<sup>83</sup> In similar fashion a mission was sent to Germany, headed by Walter R. Gherardi.<sup>84</sup>

Other missions were of a joint character, the American members being associated with appointees of the other powers. Such commissions were organized to deal with Poland,—on which the American delegates were Major General F. G. Kernan and Professor Robert Lord,<sup>85</sup>—Greece, Rumania, and other states. In addition, there were interallied commissions appointed to deal with various topics, such as reparation,

<sup>83</sup> *New York Times*, Jan. 5, 20, 21, 30, Feb. 1, 3, March 8, 1919.

<sup>84</sup> *Ibid.*, Feb. 2, 20, 1919. Arthur W. Du Bois was attached to the American commission to negotiate peace, Dec. 27, 1918, and was made a special representative of the Department of State for duty abroad, July 14, 1919. He made political investigations in Czechoslovakia, Austria, Russia, and Jugoslavia, and secured information on the financial condition of Hungary and the situation in the Ukraine. See manuscript material, Department of State.

<sup>85</sup> *New York Times*, Jan. 29, 1919.

finance, waterways, and economic questions.<sup>86</sup> On the commission on reparation, the President was represented by Bernard M. Baruch, Norman H. Davis, and Vance McCormick.<sup>87</sup> In addition to these commissions, usually formally organized and each with its own secretariat, there were many committees appointed to deal with specific questions. An illustration of this type of agency is the committee, composed of a French representative, a British delegate, and an American, Professor Charles H. Haskins,<sup>88</sup> to which problems relating to the Saar valley were referred.

Quite apart from the peace conference or its subsidiary commissions, the problem of reestablishing peaceful relations with the enemy countries gave rise to the employment of a considerable number of executive agents. These agents had powers which were distinctly diplomatic, and their positions were public in character. Typical of this group is Mr. Ellis Loring Dresel who served as American commissioner in Berlin from January, 1920, to November, 1921. The treaty of Versailles was signed June 28, 1919, but

<sup>86</sup> Haskins and Lord, *Some Problems of the Peace Conference*, 28; Baker, *Woodrow Wilson and World Settlement*, I, 397-398.

<sup>87</sup> B. M. Baruch, *The Making of the Reparation and Economic Sections of the Treaty* (New York, 1920), 15-16.

<sup>88</sup> Haskins and Lord, *Some Problems of the Peace Conference*, 29; Baker, *Woodrow Wilson and World Settlement*, II, 75. The best statement of the organization of the peace conference for the German and Austrian treaties is in *A History of the Peace Conference of Paris*, ed. H. W. V. Temperly (London, 1920-1924), I, 497-504.



when it came into force, January 10, 1920, the United States had not ratified the instrument, and the legal condition of war continued. Peace having been effected between Germany and the allied powers, there was an obvious embarrassment arising from the fact that the United States not only continued in a technical state of war, but was unrepresented at Berlin, whither the allied powers promptly sent representatives. The difficulties which the treaty was encountering in the Senate of the United States led the administration to foresee this situation, and as early as October, 1919, some means of relief were being sought.

Early in November it was determined to send Mr. Dresel to Berlin, and he was made commissioner to represent the United States and care for its interests. His actual departure was delayed, but Secretary Lansing announced the appointment, January 14, 1920, four days after the Versailles treaty went into full effect as between Germany and the allied powers. Mr. Dresel reached Berlin three days later to take up his duties.<sup>89</sup> It would be difficult to distinguish between the substance of his duties and those of a chargé. He performed the tasks regularly assigned to a diplomatic official and was designated by President Harding to negotiate and sign the treaty of peace with Germany in 1921. After the treaty was ratified he was

<sup>89</sup> *New York Times*, Nov. 1, Dec. 31, 1919, Jan. 15, 19, 1920. His activities may be followed through *New York Times*, Index. See Register of the Department of State, 1922, 113.



nominated to the Senate and appointed chargé. In that capacity he took care of American interests until an ambassador was appointed. Substantially the same statements apply to the mission of Mr. Arthur Hugh Frazier to Austria, which began September 13, 1920,<sup>90</sup> and that of Mr. U. Grant-Smith to Hungary, which began December 4, 1919.<sup>91</sup>

Reviewing practice in this particular, it is clear that both tentative and definitive moves in the direction of the restoration of friendly relations between the United States and other powers have been confided, not infrequently, to executive agents. There have been occasions, also, when the relations of the United States with foreign powers were in a state of transition, between the cessation of hostilities and the final conclusion of peace, between the disappearance of the occasion for the breach and its final repair. During such intervals relations of some sort were sometimes necessary, and it has been found more convenient and appropriate to carry them on directly, though informally, through executive agents, rather than to operate through a friendly third power.

<sup>90</sup> Register of the Department of State, 1922, 120; see *New York Times*, Index. Frazier succeeded Albert Halstead, who was appointed American commissioner at Vienna, May 15, 1919. Register of the Department of State, 1922, 127; see *New York Times*, Index.

<sup>91</sup> Register of the Department of State, 1922, p. 125; see *New York Times*, Index.

## CHAPTER VII

# AGENTS TO UNRECOGNIZED STATES AND GOVERNMENTS

### I. *Agents to Unrecognized States*

A very considerable group of executive agents is composed of those sent to unrecognized states and to unrecognized governments. The reason for using a special agent in dealing with an unrecognized state is sufficiently obvious to require no elaboration. To send a minister would involve recognition, for that is one of the most common methods of according recognition. But before it is proper or expedient to grant recognition it may be necessary to hold intercourse with a new state. The normal method employed for achieving this result, not only by the United States but by all countries, is to send a special and unofficial agent to discuss matters informally.<sup>1</sup>

The first American agent to an unrecognized state was Joel R. Poinsett. His mission, which began in 1810, was the outgrowth of events in South America. The decline of Spanish power had long since made it evident that the colonies were a vulnerable point of attack. The development of smuggling into the proportions of an important illicit trade proclaimed the inability of Spain to enforce the principles of her colo-

<sup>1</sup> See Moore, Digest, I, 206, 235.

nial policy. With the outbreak of the Napoleonic wars, therefore, South America became a fruitful field for intrigue. The efforts of the first liberator, the Venezuelan, Francesco de Miranda, to interest European statesmen in his plans for revolution in the Spanish colonies had brought South American affairs into the focus of attention. The exploit of Popham and Beresford, who captured and held Buenos Aires for a brief time in 1806, largely on their own responsibility, demonstrated the weakness of the Spanish defence. Failure to achieve success in their plan to free Montevideo and Buenos Aires did not result from any manifestation of vigor or energy on the part of the Spanish government, and the whole episode threw into high light the active character of British interest. Napoleon, also, had his emissaries in South America. The evidence that there was to be a change in the status of the continent was greatly strengthened when the colonies refused to support the Napoleonic régime in Spain and set up separate governments.

These events had not gone unobserved in the United States. The difficulties into which the long war in Europe had drawn this country persuaded Madison and Monroe that we could expect no good from either side, and that if either party gained a foothold in South America it would constitute a menace. The situation was summed up in Poinsett's instructions: "As a crisis is approaching which must produce great changes in the situation of Spanish America, and may dissolve altogether its colonial relations to Europe, and as the

geographical position of the United States, and other obvious considerations, give them an intimate interest in whatever may affect the destiny of that part of the American continent, it is our duty to turn our attention to this important subject, and to take such steps, not incompatible with the neutral character and honest policy of the United States, as the occasion renders proper. With this view you have been selected to proceed, without delay, to Buenos Ayres. You will make it your object . . . to diffuse the impression that the United States cherish the sincerest good will towards the People of Spanish America as neighbors, . . . and that, in the event of a separation from the parent country, and of the establishment of an independent system of National Government, it will coincide with the sentiments and policy of the United States to promote the most friendly relations, and the most liberal intercourse between the inhabitants of this hemisphere.”<sup>2</sup> This was getting into diplomatic contact very early. There had, as yet, been no declaration of independence. The movement so far was not revolutionary but counter-revolutionary. Poinsett was not sent to deal with a viceregal government, but with a legitimist party in revolt.<sup>3</sup> He was to intimate

<sup>2</sup> Serial 190, 20 Cong. 2 Sess., H. Rpt. 72, 7. These instructions of June 28, 1810, are given only in extract. The full text is in MS. Desp. to Consuls, I, as are subsequent instructions, Aug. 27, Nov. 6, 1810, April 30, May 1, July 3, 1811.

<sup>3</sup> F. L. Paxson, *The Independence of the South American Republics, a Study in Recognition and Foreign Policy* (Philadelphia, 1903), 45; T. Lyman, *The Diplomacy of the United States* (2d

very plainly that the United States would be glad to see revolt develop into revolution and independence.

In Mexico the first struggle for independence from the Spanish régime began under various local leaders in 1809 and 1810, and continued spasmodically until 1817.<sup>4</sup> William Shaler was appointed agent for commerce and seamen at Havana and Vera Cruz in the spring of 1810.<sup>5</sup> He arrived in Havana August 5, 1810, where he remained until December, 1811, reporting on the conditions in Cuba and the revolts throughout the Spanish colonies.<sup>6</sup> He was then sent to Natchitoches, on the border between the United States and Texas, to observe the activities of American volunteers in the Mexican revolutionary army near Nacogdoches, which was captured by a filibustering party in 1812, and to report on the progress of the revolt against the Spanish authorities. While in New Orleans he was introduced to José Bernardo Gutierrez de Lara, who, as a representative of the leader of one of the

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ed., Boston, 1828), II, 432, n. There is no good or comprehensive account of Poinsett, despite the fact that the materials are readily available and voluminous. Poinsett's papers are in the library of the Pennsylvania Historical Society; the Library of Congress has manuscript material on this first mission (journals and drafts of reports), and the Department of State has a great deal. His reports on this mission are in MS. Desp. Buenos Aires, I.

<sup>4</sup> J. H. Latané, *The United States and Latin America* (New York, 1920), 45.

<sup>5</sup> Shaler to Secretary of State Smith, June 21, 1810, MS. Special Agent Bundle.

<sup>6</sup> MS. Desp. to Consuls, I; MS. Desp. Havana, II; MS. Special Agent Bundle.

Mexican revolts, had been in touch with the Department of State in Washington in the winter of 1811 and 1812. They "journeyed together to the frontier where their apparent attachment was marked by both American and Spanish officials, who naturally inferred that the Government at Washington was behind" Gutierrez's project.<sup>7</sup> Later Shaler was on intimate terms with José Alvarez de Toledo, who had been in the United States at the same time as Gutierrez and in a way represented the revolutionary party after the latter returned to Mexico.<sup>8</sup> From the time of his arrival at Natchitoches, in April, 1812, Shaler kept the Department of State informed concerning the American volunteers who trooped into Texas until they greatly outnumbered the Mexicans in the army about Nacogdoches.<sup>9</sup> He also wrote of the French intrigues with the rebels<sup>10</sup> and the general progress of the revolt.<sup>11</sup> Shaler remained until the collapse of the republican movement in Texas in the fall of 1813.<sup>12</sup>

Next to Buenos Aires the most interesting center of disturbance was Venezuela. It was Miranda's native land. It was there that his schemes had centered for

<sup>7</sup> I. J. Cox, "Monroe and the Early Mexican Revolutionary Agents," *Ann. Rpt. Am. Hist. Ass.*, 1911, I, 206.

<sup>8</sup> Shaler to Secretary of State Monroe, April 18, May 2, 1813, MS. Special Agent Bundle.

<sup>9</sup> *Id.* to *id.*, Sept. 17, Oct. 1, 1812, Jan. 10, 1813, *ibid.*

<sup>10</sup> *Id.* to *id.*, May 17, 22, June 12, Oct. 1, 1812, April 18, 1813, *ibid.*

<sup>11</sup> *Id.* to *id.*, July 12, 1812, *ibid.*

<sup>12</sup> *Id.* to *id.*, Sept. 5, Oct. 4, 1813, *ibid.*

many years. Thither he had gone with his filibustering expedition from the United States in 1806. Venezuela had been the point toward which the British were looking in 1808.<sup>13</sup> Only the decision of England to support the legitimist succession in Spain against the Bonapartist usurpers prevented an expedition. But the resurgence of national spirit in Spain was the signal for the overthrow of the French influence in Venezuela in 1810. The rebellion ripened into revolution, and independence was declared July 5, 1811. Such a declaration could not fail to attract the attention of Madison and Monroe. Almost as soon as the news arrived, they decided to send a special agent.<sup>14</sup> Because of various circumstances (the most important was an earthquake in Caracas which upset the political situation as badly as the physical and economic), the mission was postponed until May, 1812. Monroe wrote Alexander Scott, to whom the errand was confided, that the purpose of his going and his duties were similar to those of Poinsett, a copy of whose instructions was enclosed. "The independence of the Provinces of Venezuela forms an essential difference between their situation and that of the other Provinces of Spain in America; but still, until their independence is more formally acknowledged by the United States, it cannot materially affect your duties. Until such an

<sup>13</sup> W. S. Robertson, *Rise of the Spanish-American Republics as Told in the Lives of their Liberators* (New York, 1918), 49.

<sup>14</sup> Memorial of Scott to President Adams, undated, MS. Special Agent Bundle.



acknowledgment may be made, your agency will be of a character suited to the case; for which you will receive herewith credential letters, such as are held by the Agent of the United States at Buenos Ayres." <sup>15</sup>

Scott, like Poinsett, was to make no secret of American interest in South American independence. "The United States take a sincere interest in it, from generous sentiments, and from a conviction, also, that, in many ways, it will prove reciprocally advantageous." The earthquake furnished occasion to emphasize our sympathy. As soon as its destructive character had become known, Scott suggested to Monroe and to various Senators "the policy as well as humanity of sending a donation for the relief of the distressed inhabitants of that country." <sup>16</sup> "Such an act of philanthropy, besides adding to the lustre of American character, would . . . be extremely grateful and popular with the government and people of that country." <sup>17</sup> His suggestion was followed. Congress made an appropriation; Scott carried relief with him, and his instructions closed by saying, "You will not fail to intimate, in suitable terms, that this interposition for the relief of the distressed people of Venezuela is a strong proof of the friendship and interest which the

<sup>15</sup> Monroe to Scott, May 14, 1812, Serial 178, 20 Cong. 1 Sess., H. Rpt. 182, 8; also MS. Special Agent Bundle.

<sup>16</sup> Memorial of Scott to Secretary of State Clay, May 10, 1825 (misdated, 1815), *ibid.*

<sup>17</sup> Scott to Monroe, April 21, 1812, *ibid.*

United States take in their welfare.”<sup>18</sup> Even before Scott went to Venezuela an agent had been sent to La Guayra. As early as 1810, Robert K. Lowry was sent out to act as a commercial agent, an agency which “is a substitute for that of consul in ports where consuls cannot be admitted, or to which from whatever cause they cannot be sent.”<sup>19</sup> He seems to have been limited to commercial activities and not to have had a political errand in the sense of Poinsett and Scott.<sup>20</sup>

Poinsett, Shaler, Scott and Lowry were simply the first of a considerable series of agents sent to the revolutionary governments south of the United States. With the progress of the wars the recognition policy of the United States became more cautious. At the same time the United States was suffering from the violations of the laws of sea warfare by the South Americans. .“Our vessels have been seized and condemned, our citizens made captives, and our lawful commerce, even at a distance from the theatre of war, been interrupted.”<sup>21</sup> Against these depredations pro-

<sup>18</sup> Monroe to Scott, *loc. cit.* Subsequent instructions to Scott are in the same MS. Special Agent Bundle, as is most of Scott's correspondence, detailing his misfortunes and those of his “numerous family.” Other correspondence from Scott is in MS. Desp. La Guayra, I.

<sup>19</sup> J. Q. Adams, Writings, VII, 478.

<sup>20</sup> His despatches are in MS. Desp. La Guayra, I, the first letter being dated July 10, 1810, and the first from La Guayra, Sept. 6, 1810. After the recognition of Colombia, he was formally commissioned consul. Adams to R. C. Anderson, May 27, 1823, J. Q. Adams, Writings, VII, 478. Lowry died Jan. 24, 1826.

<sup>21</sup> Rush to Rodney, Graham, and Bland, July 18, 1817, MS. Desp. to Consuls, II, 34-35.

tests had to be made. For more than ten years, therefore, it was necessary to carry on active discussions with unrecognized states. Moreover, as the recognition policy developed in caution, there was more and more emphasis laid upon the facts of the situation. The desire for exact knowledge upon which to predicate action could be satisfied only by the despatch of unofficial representatives to gather data.

Poinsett had gone to South America partly for adventure,<sup>22</sup> and had not felt it necessary to observe very strict diplomatic decorum. In fact, he soon became interested in the patriot movement, and joined the Chilean army.<sup>23</sup> His long period of residence upon the western side of South America left the administration without information as to the situation in Buenos Aires. In 1816, therefore, Monroe wrote Colonel Joseph Devereux, who was going thither on business, informing him that he had been appointed an agent of the United States to gather information "interesting in a political point of view." His status and function were similar to those of Poinsett and Scott, but quite different from Lowry, whose business was purely commercial. Devereux was also commissioned to visit Chile and Peru if occasion offered.<sup>24</sup>

<sup>22</sup> He had no salary, and only half of his expenses, an arrangement proposed by himself. Serial 178, Rpt. 182, 2.

<sup>23</sup> C. J. Stillé, "The Life and Services of Joel R. Poinsett," *Pennsylvania Magazine*, XII, 129-164, 257-303; Paxson, *Independence of the South American Republics*, 107.

<sup>24</sup> Jan. 12, 1816, MS. Desp. to Consuls, I, 370.

It had been expected that Devereux would correspond somewhat regularly and serve as agent of the United States for some time. Unfortunately, like so many others of those who went to South America, he exceeded his powers. He engaged in unwarranted financial negotiations involving the United States, and his authority was withdrawn.<sup>25</sup> It was necessary for someone to disavow his acts and to take his place as a more or less permanent observer of the revolutionary movement, as well as to look after American interests, commercial and political. In consequence, William G. D. Worthington was appointed, January 23, 1817, as special agent to Buenos Aires, Chile, and Peru. "The real as well as the ostensible object of your mission is to explain the mutual advantage of a commerce with the United States, to promote liberal and stable regulations, and to transmit seasonable information on the subject." He was also to report on matters of political interest.<sup>26</sup>

<sup>25</sup> Rush to Worthington, April 21, 1817, *ibid.*, II, 24.

<sup>26</sup> MS. Domestic Letters, XVI, 359. Subsequent instructions are in MS. Desp. to Consuls, II; his reports are in MS. Desp. Argentine Republic, I; see index at beginning of volume. Worthington was informed that his appointment, "being special," was not to interfere with those of Thomas L. Halsey at Buenos Aires or Matthew A. Havel at Santiago, whose missions were purely commercial, as Lowry's at La Guayra. Jan. 23, 1817, MS. Domestic Letters, XVI, 360. Monroe wrote Halsey, Feb. 20, 1817, that Worthington's "appointment and yours are independent of each other, but it will be expected that you will afford him every facility in your power, in the exercise of his duties and that perfect harmony will subsist between you." MS. Desp. to Consuls, I, 398. Halsey had sanctioned Devereux's negotia-

The next mission to an unrecognized state was very much more formal and pretentious than any previous. It was composed of three conspicuous figures, with a secretary, and travelled in a vessel of war. It was not without a connection with domestic politics. Henry Clay was pushing for leadership in the Republican party. He and others of his school were for an "enlarged policy," and a broader outlook on the world. Internal improvements, a larger navy, a more respectable military establishment,—these were part of the program. Clay was already riding his South American hobby. His zeal for the cause of the patriots was great. In January, 1816, he had suggested that the United States might have to take the part of the South Americans actively. Against every attempt to strengthen or rigorously to enforce the neutrality laws, he offered the objection that it meant assistance to Spain.<sup>27</sup> Unless the new administration wanted the young hot bloods to push it into war, as they had the previous administration, there must be evidences of activity. Watchful waiting was sure to lead to a demand for action.

The plan to send a commission developed early in the administration. Rush, who was acting Secretary

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tions and was later involved in further difficulties. Rush to Worthington, April 21, 1817, *loc. cit.*; Worthington to Secretary of State, Jan. 10, 21, 1818, MS. Desp. Argentine Republic, I; Paxson, *Independence of South American Republics*, 153. For references to Havel, see Worthington's despatches, April 26, May 27, 1817, MS. Desp. Argentine Republic, I.

<sup>27</sup> C. Schurz, *Henry Clay* (Boston, 1899), I, 147.

of State pending the arrival of John Quincy Adams, had a draft of their instructions ready early in June, even before the commissioners were appointed.<sup>28</sup> The commission was organized, with Caesar A. Rodney and John Graham as commissioners, and H. M. Brackenridge as secretary. The first instructions bear the date of July 18, 1817,<sup>29</sup> but family difficulties of Rodney postponed sailing, and Theodorick Bland was added to the commission, which had supplementary instructions from Adams, November 21, 1817.<sup>30</sup> They finally embarked in the frigate *Congress*, December 3, 1817.<sup>31</sup>

Monroe explained the purposes of the mission in his message to Congress: "To obtain correct information on every subject in which the United States are interested, to inspire just sentiments in all persons in authority, on either side, of our friendly disposition, so far as it may comport with an impartial neutrality,

<sup>28</sup> Calendar of the Correspondence of James Monroe, Bulletin of the Bureau of Rolls and Library of the Department of State, No. 2, November, 1893 (Washington, 1893), 206.

<sup>29</sup> MS. Desp. to Consuls, II, 34. There are several letters of instruction to the commissioners and to each separately and to Brackenridge,—all in this same volume.

<sup>30</sup> *Ibid.*, 72.

<sup>31</sup> H. M. Brackenridge, *Voyage to South America Performed by Order of the American Government in the Years 1817 and 1818, in the Frigate Congress* (London, 1820), II, 79. Their despatches and reports are in a separate manuscript volume in Department of State; there is much material in the Monroe Papers in the Library of Congress; their report was printed, *Am. State Papers, For. Rel.*, IV, 217-348.



and to secure proper respect to our commerce in every port, and from every flag, it has been thought proper to send a ship of war, with three distinguished citizens, along the southern coast, with instruction to touch at such ports as they may find most expedient for these purposes. With the existing authorities, with those in the possession of and exercising the sovereignty, must the communication be held; from them alone can redress for past injuries committed by those persons acting under them, be obtained; by them alone can the commission of the like, in the future, be prevented.”<sup>32</sup>

This mission was as nearly formal as possible without recognition. The members were given the title of commissioner.<sup>33</sup> They received salaries much beyond those usually paid special agents.<sup>34</sup> They went in a public ship, not from mere motives of convenience, but to hedge the mission with dignity and to add to its prestige. It was the formality which surrounded their departure that furnished the basis for the criticism of the mission in Congress. They seemed to be something more than special agents; hence the argument that the Constitution had been violated.<sup>35</sup>

It was not anticipated that these commissioners would go to the western side of South America, though

<sup>32</sup> Am. State Papers, For. Rel., IV, 130.

<sup>33</sup> Brackenridge, *Voyage to South America*, 34.

<sup>34</sup> *Annals of Congress*, 15 Cong. 1 Sess., II, 1464.

<sup>35</sup> Above, 220-224.



provision was made for that contingency.<sup>36</sup> To do work of a similar character in that quarter, Monroe had personally selected John B. Prevost<sup>37</sup> in July, 1817. There is one important difference, however. Prevost was to remain. His mission was not merely transient; it was expected that he would reside alternately in Chile and Peru, looking after American interests there, and supervising to a certain extent the work of other special agents.<sup>38</sup> On this mission Prevost went in the ship of war *Ontario*, which had been waiting to take Rodney and Graham. But it is not to be inferred from that fact that Prevost's mission to South America was surrounded with the same dignity and prestige as the other. He went in a public ship because of another mission, quite separate, in which he was associated with Captain Biddle of the *Ontario*.

One of the men who was to be sent out in a capacity subordinate to Prevost was Jeremy Robinson. The motives which prompted his appointment were chiefly

<sup>36</sup> Adams to Rodney, Graham, and Bland, Nov. 21, 1817, MS. Desp. to Consuls, II, 75. Bland did, as a matter of fact, go to Chile. Am. State Papers, For. Rel., IV, 270.

<sup>37</sup> Rush to Prevost, July 12, 1817, MS. Desp. to Consuls, II, 32-33.

<sup>38</sup> Id. to id., July 18, 20, 24, 1817, *ibid.*, 41-42, 43-44, 48; Adams to Prevost, Sept. 29, 1817, MS. Inst. U. S. Mins., VIII, 148-149. Several subsequent instructions are in MS. Desp. to Consuls, II. His despatches are in a separate manuscript volume, "Letters of J. B. Prevost,"—about 85 letters. The letters he exchanged with Worthington are in MS. Desp. Argentine Republic, I. He died in Chile in 1825.

commercial. About the time he succeeded in getting passage, in November, 1817, his authority was withdrawn.<sup>39</sup> Nevertheless, he went to Peru for the benefit of his health, and remained there about five years, part of the time employed by Prevost, but most of the time acting as a volunteer correspondent with the Department of State.<sup>40</sup> His connection with the government was so informal that, but for the work under Prevost, he would hardly be properly included in a list of special agents. On the other hand, the approval given to his continuing to correspond, in the voluminous manner in which he did, gives him a sort of prescriptive right to be numbered among the least formal of an informal group.<sup>41</sup>

Meanwhile Worthington had fallen into an error similar to that of his predecessor, Devereux. John

<sup>39</sup> Series of letters from Rush and Adams to Robinson, March 24, 1817,—Nov. 13, 1817, MS. Desp. to Consuls, II, 45, 47, 50, 66, 68.

<sup>40</sup> He was an industrious one. His despatches, 80 in number, with many enclosures, are in MS. Special Agent Bundle. Secretary of State Adams wrote President Monroe, Aug. 26, 1820, "I send also another letter from Jeremy Robinson of 17 January, 1820, very long and interesting. This man has given us so much valuable information, and sees things with so much more impartiality and therefore accuracy than some others who have been there that I almost wish you would forget his indiscretion by which he forfeited the commission he had obtained and restore him to some subordinate agency." J. Q. Adams, Writings, VII, 67. Robinson asked a number of times for reappointment, e. g., June 8, 1818, Sept. 12, 1819, July 16, 1821. His last letter is from Washington, Sept. 21, 1823.

<sup>41</sup> Robinson to Adams, July 18, 1821, MS. Special Agent Bundle.

Quincy Adams recorded in his diary, "I received this day a large budget of despatches from an agent in South America named Worthington, who has been swelling upon his agency until he has broken out into a self-accredited Plenipotentiary." Monroe, when he heard that Worthington "had been concluding a treaty there, said with quick and irritated tone, 'Dismiss him instantly! Recall him! Dismiss him! Now, to think what recommendations that man had! Dismiss him at once and send him notice of his dismissal by every possible channel.' " <sup>42</sup>

The recall of Worthington <sup>43</sup> left Prevost in charge of the interests of the United States throughout the whole southern part of South America. Means of communication were slow and very irregular. It took so long to hear from and reply to an agent that the despatch of business was seriously retarded. When to that difficulty was added the uncertainty as to where in half a continent the agent might be, the situation was almost intolerable. Pressing matters growing out of the violation of the neutral rights of American citizens were confided to the attention of Captain O. H. Perry in May, 1820. He was instructed to "visit Venezuela and then to go to Buenos Ayres and report all interesting information respecting the condition of

<sup>42</sup> J. Q. Adams, *Memoirs*, IV, 158-159, 70. The first quotation is from a later entry than the second, but both refer to the same action of Worthington.

<sup>43</sup> Adams to Worthington, Feb. 25, 1819, MS. Desp. to Consuls, II, 154.

the countries, their internal situation and prospects, and to assure the governments and people of the friendship of the United States Government." He was also to see what could be done by way of reparation for the "atrocious acts of piracy" and what measures might be taken to terminate them.<sup>44</sup> The death of Perry led to instructions to Commodore Morris in the same sense, but he could spend only a brief time in Buenos Aires.

These temporary agencies were clearly a futile expedient. In June, 1820, therefore, John M. Forbes was sent out to relieve Prevost of his duties either in Buenos Aires or in Peru and Chile. The choice of fields was left to Prevost; Forbes was to take the other,<sup>45</sup> which proved to be Buenos Aires. By this time the number of questions of a diplomatic nature had grown somewhat large; some of them were of pressing character. Forbes was told that his duties would "involve the political relations between these countries and the United States." This mission, therefore, was an important one, and save for the fact that it was so constituted as to avoid recognition, it was virtually an appointment as chargé.<sup>46</sup> As a fur-

<sup>44</sup> MS. Precedent List, No. 20; Adams to Forbes, July 5, 1820, MS. Desp. to Consuls, II, 189-192.

<sup>45</sup> Adams to Prevost, July 10, 1820, *ibid.*, 196-199; Adams to Forbes, June 1, 17, July 5, 1820, *ibid.*, 180, 188, 189-192. Instructions to Forbes, fifteen in all, continue until May 21, 1823, *ibid.*

<sup>46</sup> Forbes's despatches are in MS. Consular Desp. Buenos Ayres, I, II. MS. Desp. Argentine Republic, II, is also composed mostly

ther relief to Prevost, an assistant was sent out with instructions to remain in Valparaiso. Michael Hogan was appointed for this purpose, November 11, 1820, and from that time forward until recognition had been accorded, was in charge of all American interests in Chile,<sup>47</sup> performing all "the duties generally appertaining to a diplomatic agency on the part of this Government."<sup>48</sup> Similar to Hogan's appointment was that of William Tudor, who was appointed to reside in Lima, Peru, in August, 1821. He continued several years in the active discharge of his duties, having been given a formal appointment as consul, July 8, 1823, after the recognition of Peru.<sup>49</sup>

Events in the northern field of the revolutionary movement did not attract as much attention from the

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of despatches from Forbes; there are a few from Rodney, who became the first official representative, after recognition.

<sup>47</sup> Adams to Hogan, Nov. 15, 1820, MS. Desp. to Consuls, II, 220; other instructions, *ibid.*, 237, 247; notice of formal appointment as consul, Adams to Hogan, June 20, 1823, *ibid.*, 291; and see Adams to Minister Allen, Nov. 30, 1823, MS. Inst. U. S. Mins., X, 137. Hogan's despatches are in MS. Consular Letters, Valparaiso, I; one letter from New York, Feb. 27, 1821, written before he started to Chile, is in MS. Misc. Letters.

<sup>48</sup> Moore, Digest, I, 215.

<sup>49</sup> Brent to Tudor, Aug. 24, 1821, MS. Desp. to Consuls, II, 234; Adams to Tudor, July 8, 1823, *ibid.*, 292, 330; J. Q. Adams, *Memoirs*, VIII, 223-224; Moore, Digest, I, 215. His despatches are in MS. Desp. Lima, I. The first from Lima is dated June 7, 1824. There are two letters, April 19, June 4, 1822, from Boston, which indicate that he did not go promptly to his post. MS. Misc. Letters.

United States. After the return of Scott from his unfortunate mission, no new agent was sent out until 1818. Scott had witnessed the collapse of Miranda's enterprise. Bolivar's success in 1813 was short lived, and it seemed as though Spain had reconquered the northern section of the continent. It was not until 1817 that Bolivar again began to win successes to a degree which made it worth while for the United States to send an observer. There was also a second reason for sending an agent at that time; the patriot forces were running afoul of American commerce. Luis Brion, the Venezuelan admiral, seized American vessels and had them condemned by a court of which his secretary was the presiding judge. The whole transaction was a travesty of justice, and called for protest and redress.<sup>50</sup> To accomplish these things Baptis Irvine, a Scotchman of vast enthusiasm for liberty, was selected.<sup>51</sup> Among other things, he was to make clear that the lack of formal recognition of independence was not to be regarded as contrary to the interests of the patriots, for "without this formal acknowledgment they enjoy all the advantages of a friendly and commercial intercourse with us which they could enjoy with it; and . . . the effect of such a measure might probably be, without benefiting them, to entangle us in disputes with other powers."<sup>52</sup> This

<sup>50</sup> Adams to Irvine, Jan. 31, 1818, MS. Desp. to Consuls, II, 93-100.

<sup>51</sup> J. Q. Adams, *Memoirs*, V, 57.

<sup>52</sup> Adams to Irvine, loc. cit.; further instructions, MS. Desp. to Consuls, II.



constitutes the full explanation of the use of a special agent; he could perform all the duties necessary to facilitate such intercourse, without according recognition.

The mission of Irvine was temporary in character. When he returned, Bolivar was making his surprise movement to join the forces of New Granada, which culminated in the battle of Boyaca, August 7, 1819. It was necessary now to have someone there who would remain for a considerable period. Adams did not regard Irvine as a suitable person. It was by reason of the importunity of a group of "habitual recommenders" that he got his original appointment. When he came back Adams passed judgment: "He is a fanatic to the South American cause,"—"honest, but with a brain always in a snarl—with learning just enough to be pedantic, and temper just enough to be indiscreet; bitter in his dislikes and unmeasured in his resentments."<sup>53</sup>

Adams wrote to Charles S. Todd tendering the appointment, February 22, 1820. "The agency, being to a country in a state of revolution, and to authorities not recognized as established governments, is not as yet of a public nature. The time of its continuance is not susceptible of being immediately ascertained, but

<sup>53</sup> J. Q. Adams, *Memoirs*, IV, 388, 444. Irvine's reports are in a big manuscript volume by themselves. Adams records reception of the main report "of two or three folio volumes of manuscript. If labor deserves compensation, he has certainly earned his wages." *Ibid.* There is one letter from Irvine, June 23, 1820, in MS. Misc. Letters.



will be contingent upon the course of events. It will, however, probably be of a period not shorter than two or three years. Its object will be to obtain correct information concerning the state of that country and the interesting events of which it is the theatre; to promote and maintain relations of friendship and reciprocal good will between the inhabitants of their country and ours; and to obtain indemnity for certain individual claims of citizens of the United States."<sup>54</sup> The claims were the same as those which had furnished one of the causes for Irvine's mission. After Irvine failed to secure compensation or redress, the matter was committed to the care of Captain O. H. Perry. He secured promises, but not performance. Todd was to see the affair through to the end.<sup>55</sup> He was paid the salary of a *chargé* and his duties conformed closely to those expected of such an officer; he was accredited to both Venezuela and New Granada upon the understanding that they were to be united. Before he arrived Bolivar had united them.<sup>56</sup>

Just as Todd was entering upon his agency, another figure appeared upon the stage, "Dr. Samuel D. Forsyth, the ambidexter personage who is a sort of Agent

<sup>54</sup> Adams to Todd, Feb. 22, 1820, MS. Desp. to Consuls, II, 176.

<sup>55</sup> Id. to id., loc. cit. Subsequent instructions to Todd are in the same volume. His despatches are in MS. Special Agent Bundle.

<sup>56</sup> Paxson, *Independence of the South American Republics*, 83-84; W. W. Sweet, *A History of Latin-America* (New York, 1919), 153-154; Robertson, *Rise of the Spanish-American Republics*, 241-244

here from Venezuela, and has been winding upstairs here to get appointed Agent to that country." Forsyth, because he was an American citizen, succeeded in breaking through Monroe's guard, with which he kept foreign agents "at a cold and cautious distance." Monroe told Adams "to give him a letter of recommendation or certificate of approbation for Bolivar, and, if possible, to give him some agency for the recovery of the claims which had been made by B. Irvine, and afterwards by Perry." This vague direction "perplexed" Adams, not unnaturally, and Monroe admitted that "he had promised Forsyth more than he ought to have done." A solution was found by sending a letter to Torres, the agent of the Republic of Colombia in Washington, giving a mild approval to the activities of Forsyth. On this tenuous basis Forsyth interested himself in the pending claims. When he drew a draft for four hundred dollars on the Department of State, it was "accepted and paid by direction of the President," and the charge at the Treasury "balanced by a credit on the score of" Forsyth's "services and good offices in promoting the friendly relations between the two countries."<sup>57</sup>

<sup>57</sup> J. Q. Adams, *Memoirs*, V, 48, 50, 51, 62; Adams to Forsyth, Aug. 1, 1820, MS. Desp. to Consuls, II, 214. Forsyth had earlier received compensation for his good offices to Captain Perry. Adams wrote Todd, Aug. 1, 1820, he "will be disposed to render you any services of a similar nature for which you may have occasion. Should he expect further compensation for such services, you will ascertain and report to this department what the amount of his claim may be, without making any engagement with him not expressly authorized." *Ibid.*, 213. Forsyth to

At the same time that South American affairs were in the foreground, the upheaval upon the island of Santo Domingo forced itself upon the attention of the government. Early in our history, while Haiti had been under French control, the United States maintained a regular consul on the island. This representation, however, ceased at the time of the revolution. With the revolution, also, came difficulties between American ships and the revolutionary authorities. What came to be known as the great sequestration took place in the years 1810 and 1811. Christophe, who held power, had a claim against the firm of Von Kapff and Brune, of Baltimore. On October 8, 1810, he appointed a commission to examine the books of American merchants at Cape Henry and Gonaives to determine the amount of cash and goods they had on hand. He also directed the commission to seize enough to satisfy his claim, authorizing the despoiled merchants and shipmasters to draw upon the Baltimore firm to reimburse themselves. Before the episode was closed, in April, 1811, nearly one hundred and twenty-five thousand dollars had been taken from Americans.<sup>58</sup> The events just narrated were typical of the difficulties that developed. Late in 1815 a citizen of the United States was arrested on the charge of being a spy of the French government. Consequently,

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Adams, June 14, 1821, MS. Special Agent Bundle; May 6, 1823, MS. Misc. Letters; Adams to Forsyth, April 10, 1820, MS. Domestic Letters, XVIII.

<sup>58</sup> Serial 420, Doc. 36.

in June, 1816, Monroe instructed Jacob Lewis, who was going to La Guayra, to stop at Cape François to protest. He was given a "certificate authorizing the application" for the release of the American. In the certificate Christophe was referred to as "Governor, etc., etc., a title which it is understood will be satisfactory to him. You may show him the paper as the ground of your application, which has been preferred to a letter addressed directly to him, as it tends less to compromit this Government with France."<sup>59</sup> Lewis was detained and did not go to perform the mission.<sup>60</sup>

When this agency of a transient character was given up, it was replaced by one intended to be more permanent. On April 15, 1817, Monroe wrote to Septimus Tyler that it had been deemed important to have an agent "reside" at Cape François to take care of American interests.<sup>61</sup> The claims arising from the great sequestration were especially committed to his diligent care.<sup>62</sup> He was sent in a public vessel because it was thought that the appearance of a war vessel might have a salutary effect.<sup>63</sup> A good deal of pains

<sup>59</sup> Monroe to Lewis, June 13, 1816, MS. Desp. to Consuls, I, 384; id. to id., June 21, 1816, MS. Domestic Letters, XVI, 395-397.

<sup>60</sup> Series of letters from Lewis, MS. Special Agent Bundle; replies by Secretary of State, MS. Desp. to Consuls, II, 26, 58, 78.

<sup>61</sup> Dec. 20, 1816, Serial 420, Doc. 36, 114.

<sup>62</sup> Monroe to Tyler, Jan. 29, 1817, *ibid.*, 116; and MS. Desp. to Consuls, I, 397.

<sup>63</sup> Serial 420, Doc. 36., 115; Rush to Tyler, April 15, 1817, MS. Desp. to Consuls, II, 24, 26.

had been taken by the Department of State to avoid sending any document that might be used by Christophe to make it appear that his government had been recognized. The absence of acceptable credentials was made the basis of refusal to receive Tyler. The Comte de Limonade, Secretary of State for Foreign Affairs to His Majesty King Henry,<sup>64</sup> expressed his surprise that Tyler carried no letter of credence, but a "mere certificate, couched in unusual and inadmissible terms," especially where it referred to *Cape François* and the *Island of Santo Domingo*, "expressions both improper and injurious to the government of His Majesty."<sup>65</sup>

Petion, who controlled the other part of the island, was not as insistent upon forms of credence and address as was Christophe. As early as 1813 William

<sup>64</sup> Christophe's official name.

<sup>65</sup> Comte de Limonade to Lewis, Aug. 1, 1817, Serial 420, Doc. 36, 117. The Count excused the United States, with elaborate insolence, on the ground of its ignorance. It is more surprising to find a recent author missing the point entirely. In M. Treudley, "The United States and Santo Domingo" (*Journal of Race Development*, VII, 222), is found the statement, "The American disregard of ordinary diplomatic usage would seem to be sufficient justification for his action." On the contrary, the United States followed the proper usage in dealing with an unrecognized government. Circumstances were such that it was fairly clear that recognition would not soon be accorded. It was, therefore, necessary to be doubly guarded in the terms and titles used. Tyler's correspondence, Jan. 2, 1817,—April 23, 1817, is in MS. Consular Letters, Cape Haitien, V. He announced his failure and intention to return to the United States in a letter to Adams, Secretary of State, Aug. 3, 1817. Serial 420, Doc. 36, 116. He died on the passage home. Oct. 2, 1817, J. Q. Adams, *Memoirs*, IV, 12.

Taylor was serving in some capacity at Port-au-Prince.<sup>66</sup> He remained there some years. In February, 1818, Taylor was sent to Cape Henry to see if he could deal with Christophe more successfully than had Tyler. In order to take Taylor's place in the area controlled by Petion, Jacob Lewis was appointed a special agent, February 7, 1818. He went on the brig *Hornet*, was received by Petion without any difficulty, and remained in the discharge of his functions until there was a new political alignment on the island.<sup>67</sup> Taylor could not hope to be so well received by Christophe, but an effort was made by the Department of State to obviate the objection which had been a bar to the acceptance of Tyler's credentials, but still avoid anything that might be construed as recognition. The expedient adopted was to have Captain Read, commander of the sloop of war *Hornet*, whose official character could not be doubted, land with Taylor and introduce him as the agent of the United States.<sup>68</sup>

Taylor was to be careful to observe all suitable respect to the "existing authority," but he was explicitly instructed that if "a formal acknowledgment of the Government by that of the United States, with

<sup>66</sup> Treudley, "United States and Santo Domingo," 221; Taylor to Monroe, Dec. 5, 1814, MS. Special Agent Bundle.

<sup>67</sup> Adams to Lewis, Feb. 7, 1818, Serial 420, Doc. 36, 42; other instructions, MS. Desp. to Consuls, II; his despatches, MS. Special Agent Bundle.

<sup>68</sup> Adams to Taylor, Feb., 1818, MS. Desp. to Consuls, II, 110-111; extracts, Serial 420, Doc. 36, 117; other instructions, MS. Desp. to Consuls, II, 104, 112, 115.



the assumed royal title, he insisted upon as the condition of your admission, you will declare your incompetency to agree to such a condition" and return to the United States. The effort was not successful. Dupuy, the king's confidential secretary, wrote Taylor that his coming in a sloop of war gave him no official character, and in a personal interview told him that the introduction by Captain Read was a "species of deception."<sup>69</sup> The real fact was that Taylor and Tyler came on missions that were unwelcome. If they had come to do something which Christophe desired, no difficulty would have been made about credentials. But he wished to escape diplomatic pressure for payment and took refuge in impossible demands—impossible because they would have involved recognition of a government which did not meet the standards required of independent states.

In 1818 Petion died and Christophe attempted to unite the island under his control. Failure was followed by revolt, and amid the crumbling ruins of his showy monarchy he committed suicide. Both were succeeded by Boyer, who united the island under one government, republican in form. Boyer had had dealings with American agents and it was evident that he would not make objection because letters of credence were lacking. Early in 1821, therefore, Edward Wyer, who was a sort of diplomatic man-of-all-work

<sup>69</sup> Taylor to Adams, May 30, 1818, Serial 420, Doc. 36, 118-120, 121; other despatches, MS. Consular Letters, Cape Haitien, V.



for Adams, was sent out to make a new effort to settle the claims which had so long been pending.<sup>70</sup> Though he was received with courtesy, Wyer made no headway. The ostensible ground for refusing to pay the claims was that the acts complained of had been committed by Christophe, a rebel against the republic. Fundamentally, however, the difficulty was that the United States declined to "recognize in a manner authentic and honorable to both nations the Independence of the Republic of Haiti."<sup>71</sup> Despite the ill success of Wyer in securing payment of claims, and in persuading Boyer to abandon a differential tariff in favor of British goods, the president of Haiti was not entirely hostile. Andrew Armstrong had been sent out in March, 1820, as commercial agent. He resided at Port-au-Prince, and Wyer reported that he was "very much respected," and stood "very high with the President, Boyer."<sup>72</sup>

William Taylor, who had met with rejection by Christophe, was appointed commercial agent to Vera Cruz, March 16, 1822. This appointment was made

<sup>70</sup> Adams to Wyer, Jan. 30, 1821, Serial 420, Doc. 36, 120, 121.

<sup>71</sup> Extract of a letter, Boyer to Wyer, March 17, 1821, enclosed in report, Wyer to Adams, April 10, 1821, MS. Special Agent Bundle; Wyer's despatches, *ibid.*; instructions, MS. Desp. to Consuls, II; see, for comment on the mission, Adams to two Senators, Moore, Digest, I, 216.

<sup>72</sup> Adams to Armstrong, March 30, 1820, MS. Desp. to Consuls, II. He remained some years, the last instruction being dated March 1, 1827. His reports are in MS. Consular Letters, Cape Haitien, V. Wyer's comment is in a letter to Adams, March 12, 1821, MS. Special Agent Bundle.

eight days after the special message of President Monroe, announcing his intention to recognize Mexico and requesting an appropriation for a minister.<sup>73</sup> It was before formal recognition, which occurred with the appointment of a minister, January 27, 1823.<sup>74</sup> Taylor's duties were commercial, and though he was an informal agent, carrying only a certificate of appointment, an *exequatur* was issued to him, in which he was described as consul.<sup>75</sup>

Shortly after Taylor was appointed, an emissary of a wholly different sort was sent to Mexico. Though President Monroe had announced his desire to extend recognition, the information at hand about the Mexican country and its government was pitifully meagre. The President, therefore, requested Joel R. Poinsett to go to Mexico and report upon the situation.<sup>76</sup> The choice was an admirable one. His long experience in South America a decade before had fully acquainted Poinsett with the characteristic politics of the area, and his knowledge of the language was perfect. He was sympathetic, but experience had taken the fine edge from his enthusiasm. He was a seasoned and

<sup>73</sup> Richardson, *Messages and Papers*, II, 116-118.

<sup>74</sup> Moore, *Digest*, I, 91.

<sup>75</sup> Santibañez, *Diplomacia Mexicana*, II, 341, 343-344. He was formally appointed consul after recognition. Adams to Taylor, June 20, 1823, MS. Desp. to Consuls, II, 291; previous instructions, *ibid.*; despatches, MS. Consular Letters, Vera Cruz, I.

<sup>76</sup> *Calendar of Monroe Correspondence*, 187, 188.

intelligent observer. Landing at Vera Cruz, Poinsett went to Mexico City, and thence to Tampico, where he again took ship. A day-to-day account of his journey, which was published in 1825, makes fascinating reading and impresses one with Poinsett's skill as a mirror of events and conditions.<sup>77</sup> It is slight wonder that his opinions had an important influence upon American policy, or that he should have been made, after certain political maneuvers with other possible appointees, the first American minister to Mexico.

In 1824 the United States developed a lively, but temporary, interest in Guatemala. It was then known by the formal title of the Federal States of the Center of America. Its rise and development had been subsequent to the principal Latin-American states which had already been recognized. One of its provinces was the subject of especial interest. San Salvador had by vote of its congress proposed annexation to the United States, December 5, 1822. The action was taken at a moment when it seemed likely that the territory of San Salvador would be swallowed up by the Mexican Empire of Iturbide. Before the com-

<sup>77</sup> J. R. Poinsett, *Notes on Mexico* (London, 1825), *passim*. He was also concerned during this mission with the Texas boundary. W. R. Manning, *Early Diplomatic Relations between the United States and Mexico* (Baltimore, 1916), 289-290. Poinsett's report is in MS. Duplicate Volumes Series. Two letters, Feb. 5, and March 28, 1823, are in MS. Misc. Letters. One letter, with reference to his expenses, March 27, 1823, is in MS. Domestic Letters, XX. See Stille, "Poinsett," 31-32.

missioners reached Washington with the proposal, Iturbide had been overthrown, and the danger having disappeared, the offer was withdrawn. "Whatever obstacles there might have been in the physical nature of things, or in the constitutional arrangements of our Government, to this union, it cannot be doubted that the proposal itself and the spirit in which it was made, were adapted to inspire the warmest sentiments of regard and attachment on our part." The motives for interest were not all sentimental. Because of its strategic position on the isthmus, "the relations political as well as commercial between that country and the United States must acquire from year to year magnitude and importance. But of all the countries of the southern continent, it is that with which we have, hitherto, the fewest relations, and concerning which we have the least information."<sup>78</sup> After such lively expressions of interest one might expect a determined effort to establish contact, but for some reason the whole proposal for sending an agent fell to the ground when the appointee, Thomas N. Mann, died on the eve of sailing.<sup>79</sup>

Another mission, which also proved abortive because of the death of the agent, was proposed in 1825. The

<sup>78</sup> Adams to T. N. Mann, July 17, 1824, MS. Inst. U. S. Mins., X, 195-198; other instructions, *ibid.*, 181, 188; MS. Desp. to Consuls, II, 315.

<sup>79</sup> Brent to Watts, secretary of legation in Colombia, July 21, 1824, *ibid.*, 198; Watts to Adams, July 22, 1824, MS. Desp. Colombia, III.

struggle for Greek independence had excited in the United States, even more than in other liberal countries, an intense enthusiasm. On September 6, 1825, therefore, President Adams secretly instructed William C. Somerville, a young and talented writer, to proceed to Greece. He embarked on the *Brandywine*, which was to carry Lafayette back to France. This was a matter of design, for Adams especially desired Somerville to go in company with Lafayette. On reaching France, however, Somerville was stricken ill and died.<sup>80</sup>

After the appointment of Somerville more than ten years elapsed before there was again occasion to send an agent to an unrecognized state. In 1836, Henry M. Morfit was sent to Texas in order to gather information. It was the almost uniform practice of the Department of State, before according a state formal recognition, to send an agent to investigate its condition. The instructions to these agents were all built upon the same model, and directed inquiry into the political, social, and economic conditions, military strength, financial resources, and the disposition of the government to meet its international obligations. Morfit's ran true to type; there were only such

<sup>80</sup> Adams to Somerville, Sept. 6, 1825, MS. Inst. Sp. Miss., I, 31-33; J. Q. Adams, *Memoirs*, VII, 49, 78. His despatches, from Paris and St. Cloud, are in MS. Desp. Sweden and Norway, IV; news of his death came from James Brown, minister to France, Jan. 11, 30, 1826, MS. Desp. France, XXIII. See, also, E. M. Earle, "Early American Policy Concerning Ottoman Minorities," *Political Science Quarterly*, XLII, 362-364.

variations as the peculiar situation of Texas made necessary.<sup>81</sup>

The mission was a secret one, but the president of Texas and others were let into the secret. Indeed, the news of it leaked out so rapidly that, though he was not nominated to the Senate, his appointment became known to its members, and shortly before he set out, the Senate, by resolution, expressed its satisfaction "that the President . . . has adopted measures to ascertain the political, military, and civil condition of Texas."<sup>82</sup> Morfit was a capable and candid observer. In the long run he won the confidence of responsible Texans as well as officials of the United States gov-

<sup>81</sup> Forsyth to Morfit, June 23, 1836, MS. Inst. Sp. Miss., I, 159-161. Rives, *United States and Mexico*, I, 389, mistakenly says Morfit's instructions were "probably verbal."

<sup>82</sup> June 18, 1836, Rives, *United States and Mexico*, I, 387; see Moore, *Digest*, I, 98. Not only Morfit's instructions, but also letters relative to his mission,—to Burnet, president of Texas; to Major General Samuel Houston; to James Breedlove, collector of customs at New Orleans,—are in MS. Inst. Sp. Miss., I, 161, 162. Morfit's despatches, twelve in number, beginning July 18, 1836, at New Orleans, and ending Sept. 14, 1836, at Velasco, Texas, are in MS. Desp. Texas, I. A letter from Congressman Benjamin C. Howard, enclosing Morfit's report, Jan. 6, 1837, is in MS. Misc. Letters; the reply to Howard is in MS. Report Book, V. His payment is recorded in Serial 322, 25 Cong. 2 Sess., H. Doc. 10, 35; his report was printed in Serial 297, 24 Cong. 2 Sess., Sen. Doc. 20. It was a secret mission, but rather an open secret. Collinworth and Grayson, Texan agents in Washington, to Burnet, July 15, 1836; Grayson to Jack, Texan secretary of state, Aug. 11, 1836; G. P. Garrison, "Diplomatic Correspondence of the Republic of Texas," *Ann. Rpt. Am. Hist. Ass.*, 1907, II, 1908, II, pt. 1 and 2, 1, 110, 122.

ernment.<sup>83</sup> His report, unfavorable to recognition on the ground that various circumstances "might detain Texas lingering in her embryo state for many years," had a considerable, even though short-lived, influence upon Jackson's decision to "still stand aloof and maintain our present attitude . . . until the lapse of time or the course of events shall have proved beyond cavil or dispute the ability of the people of that country to maintain their separate sovereignty."<sup>84</sup>

Plans for an agency, which proved abortive, grew out of American interest in a canal or railroad across the isthmus at Panama. The states of Veragua and Panama attempted to set up a government separate from New Granada, and applied, in 1841, to the United States to be recognized as an independent power known as the State of the Isthmus.<sup>85</sup> J. H. Ingraham was appointed a special agent "to proceed to that quarter for the purpose of inquiring into the ability of the people of the Isthmus to maintain their independence." Before he could start out, information was received from the consul at Carthagena that

<sup>83</sup> See J. H. Smith, *Annexation of Texas* (New York, 1911), 13; Amory, secretary of Texan legation at Washington, to secretary of state of Texas, Jan. 4, 1841 [1842], Garrison, "Texas Diplomatic Correspondence," I, 521-522.

<sup>84</sup> Jackson's message to Congress, Dec. 21, 1836, Richardson, *Messages and Papers*, III, 268-269. Jackson's decision to recognize Texas before March 4, 1837, was influenced by other factors not pertinent to this discussion.

<sup>85</sup> Fletcher Webster to Blackford, chargé at Bogota, May 20, 1842, MS. Inst. Colombia, XV, 78-79.



"at the south all is tranquil. Panama and Veragua was [sic] reincorporated to the central government" on December 31, 1841. The agency was thereupon abandoned.<sup>86</sup>

No further occasion arose for the employment of an agent to an unrecognized state until Polk became President. Then an agent was sent to Paraguay. So far as the United States was concerned, Paraguay had been completely neglected for thirty-four years after its declaration of independence. During the long rule of Francia no notice was taken of it. When, in 1845, Polk's administration began to display interest, previous administrations were held to have been derelict. "This interesting country has not hitherto received that portion of attention from the Government of the United States which its importance demands. We must now endeavor, by vigor and activity, to repair what we may have lost by delay." Paraguay, on its part, was anxious for intercourse. "The President of that Republic has manifested his anxiety that we should acknowledge its independence and recognize it as a member of the family of nations. Indeed, its Government has gone so far as to express the desire to be on terms of more intimate friendship with us than with any other nation." To display the necessary vigor and activity, a young and ambitious man was selected. Edward A. Hopkins was "younger than

<sup>86</sup> Sanchez to Webster, No. 19, Jan. 20, 1842, MS. Consular Desp. Carthagená, IV; Webster to Ingraham, Feb. 11, 1842, MS. Domestic Letters, XXXII, 198.

most of those to whom such trusts have been confided," but his industry and zeal were to make up for want of years.

The instructions to guide his conduct were extraordinary. The first part was in an enthusiastic, confident vein, with many warm terms. The youthful emissary was "to assure the President of Paraguay of the deep interest which the American government feels in the prosperity of his country." Like Roberts, he was to point out the virtues of American policy; in commercial intercourse the policy of the United States "has been to follow the golden rule of doing unto others as they would others should do unto them." Adopting the rôle of guide, counsellor, and friend, Hopkins was to "embrace some suitable opportunity to warn the government of Paraguay of the danger of forming entangling alliances with other nations. . . . You might instruct it as to what had been the policy of the United States in this particular, and the happy effects which have resulted therefrom. By pursuing a similar course, Paraguay will make friends of all nations instead of exciting the jealousy of all against her except the favored nation." If he was "well satisfied, after having with prudence and perseverance acquired all the information in your power, that Paraguay is in fact an independent nation and is capable of maintaining her independence," Hopkins was to "commit the President" to recognition of Paraguay. From that point forward the instructions took on another tone. Hopkins was given the routine instruc-

tions ordinarily sent to an agent despatched to investigate the status of an unrecognized country. And at the end they tapered off by warning this apostle of good will and instructor in political and commercial felicity to abstain "from the least intimation that you are a government agent, unless when this shall be clearly necessary to accomplish the objects of your mission."<sup>87</sup>

In point of energy and activity Hopkins left nothing to be desired. He entered into the high politics of European intervention in South America with great enthusiasm. England and France were to be discomfited and South America was to enjoy "the same principles that our forefathers first handed down to us as our proudest heirloom." He discovered that Paraguay had entered into an entangling alliance with a revolting province of the Argentine Republic, and wrote Secretary Buchanan, in the spirit of his instructions: "I shall remonstrate with her government, and have no doubt from her good sense that she will correct the mistake." He gathered data about Paraguay which convinced him "that she is more worthy of her rights in the family of nations than any other republic on this continent, save our own," and "next to our country, the most united, the richest, and the strongest nation of the new world." He therefore "fully and explicitly committed the President on the subject of the recognition of the independence of

<sup>87</sup> Buchanan to Hopkins, June 10, 1845, MS. Inst. Sp. Miss., I, 218-223.

Paraguay." Attempting to mediate between the Argentine and Paraguay, he became convinced that the Argentine government was evil, and wrote the head of it a letter: "Can I present a more horrible picture to your mind than to ask you the questions: What is the executive government? What is the judicial government? What is the legislative government of your country? and to answer them thus: The first is a despotism; the second a rotten foul tool of oppression; the third a sychophantic cringing puppet to the two former."<sup>88</sup> Altogether this mission was one of the most extraordinary chapters in the history of amateur diplomacy. Buchanan, who had paved the way to Hopkins' folly by his instructions, was shocked and sent a peremptory recall. And the recognition of Paraguay was postponed.<sup>89</sup>

During Monroe's administration a number of agents had been sent to Santo Domingo. The middle of the century saw another considerable group sent thither.

<sup>88</sup> Hopkins' despatches, eight numbered, and one unnumbered, are in MS. Special Agent Bundle. They begin Aug. 5, 1845, from Rio de Janeiro, and end June 10, 1846, from Washington. His remarkable letter to Rosas is an enclosure in a note from Minister Alvear to Secretary Buchanan, July 20, 1846, MS. Notes from Argentine Legation, I; Buchanan's apology, Aug. 14, 1846, is in MS. Notes to Argentine Legation, VI, 19-21. Subsequent letters from Hopkins to Department of State, June 15, Nov. 25, 1849, are in MS. Misc. Letters; and replies, June 15, 1849, Jan. 30, 1850, in MS. Domestic Letters, XXXVII. Two letters from Hopkins, May 22, 25, 1849, are in MS. Special Agent Bundle.

<sup>89</sup> Buchanan to Hopkins, March 30, 1846, MS. Inst. Sp. Miss., I.

Between the years 1845 and 1854 no less than six executive agents visited that country, which still remained unrecognized. The first of the group was John B. Hogan, who was instructed on February 22, 1845. The occasion for the revival of interest was the separation of Santo Domingo from Haiti. Boyer had consolidated the two in 1822, and it was not until 1843 that civil strife in Haiti furnished opportunity for Santo Domingo to break away and set up a "white" republic. The term white could only be used in a comparative sense, but it meant that there would be less opposition in the South to recognition. The new republic sent Dr. J. M. Caminero as its envoy, furnished with letters of credence. He wrote to Calhoun, the Secretary of State, and enclosed a memoir "embracing a historical sketch of the events which led to the declaration of independence of the Dominican Republic and the establishment of a separate government." In this he pointed out that "the population amounts to more than 200,000 souls, half of whom are white, who hold the general administration." Calhoun told Caminero that President Tyler had read the memoir with much interest, "but that it has been the usage of this government before it recognizes the independence of one newly established to appoint a commissioner to proceed to that country and to investigate and report his opinion on all the facts and circumstances on which it is deemed necessary to be informed before a decision is made." Hogan was that com-

missioner,<sup>90</sup> and his instructions were of the regular sort.

Hogan was sent out by Tyler and Calhoun. He reported to Polk and Buchanan late in 1845.<sup>91</sup> His report sustained the favorable impression which Tyler had entertained.<sup>92</sup> But the new administration determined upon a fresh investigation. This was committed to a young naval lieutenant, David D. Porter, who set out upon his mission in April, 1846.<sup>93</sup> He was considerably jarred when he was presented to the president of the republic to find that functionary in his shirt-sleeves with a bandana tied about his head. He was distressed at the deplorable financial condition of the country, the utter depreciation of the paper money, and the monopoly of specie held by the Jews. The abject poverty of the country, the ignorance of the people, and the neglect of religion all impressed him unfavorably. But his thorough exploration of the island convinced him of its great potentialities, and his

<sup>90</sup> Calhoun to Caminero, Feb. 21, 1845, MS. Inst. Sp. Miss., I, 210; Caminero to Calhoun, Jan. 8, 1845, Serial 1440, 41 Cong. 3 Sess., Sen. Ex. Doc. 17, 27-32; Calhoun to Hogan, Feb. 22, 1845, *ibid.*, 33; MS. Inst. Sp. Miss., I, 211-212.

<sup>91</sup> His payment is recorded in Serial 481, Doc. 11, 25.

<sup>92</sup> His reports are in MS. Special Agent Bundle. His final report and a supplementary report were both sent to the Senate committee on foreign affairs. Buchanan to Mangum, April 12, 1848, MS. Report Book, VI. His report was printed, Serial 1440, Doc. 17, 38-43.

<sup>93</sup> D. D. Porter, "Secret Missions to San Domingo," *North American Review*, CXXVIII, 616.

report was elaborate and highly favorable,<sup>94</sup> although it did not result in action. It came at the moment when the Mexican War was absorbing attention. As a result, matters drifted until 1849. In fact, it was not until fear that Great Britain was going to poach upon the American preserve became acute that anything was done. The war with Haiti had gone badly for Santo Domingo, and it was ready to pay any price for aid from any quarter. France and Great Britain were asked to assume a protectorate, and annexation was suggested to the United States.<sup>95</sup>

The fear of British aggression was frankly avowed by Secretary of State Clayton, who opened his instructions to Benjamin E. Green by saying: "It has been intimated to this Department by a person likely to be well informed, that the British Government has a commissioner accredited to the Government of the Dominican Republic, who is charged to obtain by negotiation the cession to Great Britain of the Bay of Samana, that there is a draft of a treaty by which England pledges herself to recognize the Government of that Republic, provided the cession adverted to be made to her, and that this condition is embodied in a secret article of the treaty. This information has been a motive for appointing you a special agent of the United States to the Dominican Republic." Green was to investigate the truth of the rumor. If it was well

<sup>94</sup> Report of Secretary of State Fish to President Grant, Jan. 16, 1871, Serial 1440, Doc. 17, 3.

<sup>95</sup> Treudley, "United States and Santo Domingo," 235.



founded, and the matter had been concluded, he was merely to report the details; but "if the cession should not have been completed, you will endeavor to defeat it by strenuous yet respectful representations to the Minister of Foreign Affairs." The representations were to be in the nature of warning as to the inevitable fate of the Dominican Republic, with apt illustrations. "In this respect the history of the British settlement at Belize, Honduras, affords an apposite and pregnant warning," for the British expanded their limited privileges there until "that settlement has to all intents and purposes become a British colony." Green was also directed to study the reports of Hogan and Porter and to investigate the accuracy of their observations. If he became convinced that their conclusions were sound, Green was to attempt to negotiate a treaty of commerce with the Dominican government, and to seek the grant of "a site on the coast of the Bay of Samana, suitable as a stopping place for the United States steamers, and a place of deposit for coal to be used by them."<sup>96</sup>

Green was authorized, also, to go to Haiti. The United States had developed an extensive and profitable trade with that country. But failure to grant recognition deprived the trade of guarantees which its further development demanded. There were commercial agents of the United States in Haiti,<sup>97</sup> but they

<sup>96</sup> Clayton to Green, June 13, 1849, MS. Inst., Sp. Miss., I, 280-289.

<sup>97</sup> Upshur to Ingersoll, chairman of the committee on foreign

were unrecognized, and their functions were correspondingly limited. Routine matters they were allowed to attend to, but when some issue arose, where their services were most needed by their nationals, they were unceremoniously brushed aside by the Haitian government. The United States, because Haiti was a black republic, was not willing to depart entirely from the policy of nonrecognition. But in order to give more efficient protection to American lives and property, "it is hoped that some compromise may be effected with that government, by means of which, without incurring any obligation to receive a diplomatic agent or consul from them we might obtain the benefits of a full recognition of that government." Indeed, so far did Clayton go that Green was to draw a claims convention with Haiti, which should not operate, however, as a full recognition of its independence. The ever-present matter of claims was also confided to his care. Like most others these claims had been "long pending" and most of them were of "undoubted merit." Fruitless effort to reach an agreement had convinced the Secretary of State that "the aggrieved parties" could "never hope for redress, without a resort to force, so long as this government may deem it expedient to adhere to the punctilio in regard to recognizing that of Haiti, which has hitherto been paramount in our councils." It was hoped that the "partial recognition" which Green's agreement

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affairs of the House of Representatives, Feb. 24, 1844, Serial 446, 28 Cong. 1 Sess., H. Rpt. 428, 1.

involved would "conduce to the adjustment and payment of the claims."<sup>98</sup> If the Haitian government should prove intractable, and decline these limited proffers, Green was to "intimate to the Haytian authorities that this government will not view with indifference any further incursions on their part into the territories of the Dominican Republic for warlike or predatory purposes."<sup>99</sup>

So far as Santo Domingo was concerned, Green had been given power practically to recognize the independence of the state. But after his departure the administration decided that "the application of the Dominican authorities for the protection of France, which must have been made from a dread of further invasions on the part of the Haytians, would seem to indicate that the independence of the Republic is not established with such firmness as to warrant us in concluding a treaty with them." Despite Green's recommendation that "we should . . . not only recognize them, but as far as possible support and aid them,"<sup>100</sup> recognition was again postponed.<sup>101</sup> Before

<sup>98</sup> Clayton to Green, *loc. cit.*

<sup>99</sup> *Id.* to *id.*, Feb. 16, 1850, MS. Inst. Sp. Miss., I, 305.

<sup>100</sup> Serial 694, 33 Cong. 1 Sess., Sen. Ex. Doc. 12, 11.

<sup>101</sup> Clayton to Green, Feb. 16, 1850, *loc. cit.* Green's despatches, from June 16, 1849, from Washington, to Aug. 7, 1850, also from Washington, are in MS. Secret Service Vol., I, 1, 9, 11, 15, 19, 27, 63, 77, 105, 121, 137, 149, 181, 185, 187 (his report, with enclosures), 293, 305. Enclosures sent with the list of these are in MS. Special Agent Bundle. There is much printed material in government documents. See Hasse, Index, I, 691-692.

Green returned to the United States, the Dominican foreign minister, on February 22, 1850, sent a circular to him and to the British and French consuls requesting the mediation of the governments of the United States, France, and Great Britain for the purpose of bringing about peace with Haiti. The American government took no step. But Sir Henry Bulwer, the British minister in Washington, informed Clayton, May 11, 1850, that France and Great Britain were ready to cooperate. Clayton seems, in the interval between February and May, 1850, to have changed his mind again with regard to recognition, for he replied to Bulwer, May 20, 1850, that after the return of Green, a chargé would be nominated to the Senate and sent out empowered to cooperate with the representatives of France and Great Britain.<sup>102</sup>

This program was broken up by the death of President Taylor; the Fillmore administration decided to employ a special agent, Robert Walsh, early in 1851, thus withholding recognition once more.<sup>103</sup> Walsh was to cooperate with British and French representatives in an effort to end the war. The motives of the proposed diplomatic intervention Webster declared to be primarily philanthropic, but he also pointed out, as a matter distinctly pertinent, that the material interests

<sup>102</sup> Clayton wrote Green that he would have the post on the conclusion of his agency. May 20, 1850, Serial 621, 32 Cong. 1 Sess., Sen. Ex. Doc. 113, 3.

<sup>103</sup> Webster to Walsh, Jan. 18, 1851, Serial 621, Doc. 113, 3; and MS. Inst. Sp. Miss., I, 321.

involved,—particularly those of France and Britain,—were considerable. Indeed, Webster feared that the material interests of the other powers might induce them to make concessions to Haiti beyond those the American government thought proper. He pointed out to Walsh this divergence of interest among the cooperating powers, and warned him to resist any such concessions as far as he could, compatibly with the main objects of his mission. The intervention was to be distinctly diplomatic, but Walsh was privileged to refer to the gun behind the door. If the Emperor of Haiti was not responsive to representations, “you will signify to the Emperor that you shall give immediate notice to your government that the President, with the concurrence of Congress, may adopt such measures in coöperation with the governments of England and France as may cause the intervention of the three powers to be respected.”<sup>104</sup> To back up this intimation, orders were issued to the commanding officer of the home squadron “to cooperate with those of Great Britain and France in any measures short of actual coercion consistent with the views of this Government.”<sup>105</sup>

The cooperation between the agents was not very close. Their menaces were rather hollow. The show of force was feeble, “especially as the only man-of-war in the harbor during the negotiations was the little

<sup>104</sup> Serial 621, Doc. 113, 4.

<sup>105</sup> Derrick, acting, to Crampton, British minister, Sept. 4, 1851, Moore, Digest, VI, 514.

steamer which was to play yacht for the Frenchman, and which did not look very mischievous to the naked eye." In any event, the Haitian government flatly rejected both a proposition for peace and an alternate proposition for a ten-year truce.<sup>106</sup> The most the mediators could get was an understanding that there would be no more fighting for two years, the announcement of which by a Haitian general was delivered to the people of Santo Domingo "in so belligerent a way that the inhabitants fell upon him and drove him back." Whereupon the Haitian emperor had his maladroitness messenger shot.<sup>107</sup> This situation was not satisfactory, and Fillmore overstated the case when he declared in a message to Congress, December 2, 1851, that peace had "been concluded between the contending parties in the island of Santo Domingo, and it is hoped, upon a durable basis."<sup>108</sup>

Clayton's brilliant scheme for a "partial" recognition of Haiti made trouble. Green had made an arrangement by which "the Commercial Agents of the United States in Haiti were recognized as Consuls," but Haiti expected reciprocity, and appointed a consul to reside in Boston, and requested "his recognition in that character. With this request, we are not prepared to comply, but we are willing that he or any other

<sup>106</sup> R. Walsh, "My Mission to San Domingo," Lippincott's Magazine, VII, 307; Walsh to Webster, No. 8, April 23, 1851, MS. Secret Service Vol., I, 421.

<sup>107</sup> Walsh, "My Mission to Saint Domingo," 305.

<sup>108</sup> Richardson, Messages and Papers, V, 122.

person not of African extraction should be appointed Commercial Agent." Walsh was given the task of explaining this to the Haitian government in a way to make that government agree to the American ruling.<sup>109</sup> He attempted to make the explanation, but the Haitian government "after nursing its anger for nearly a fortnight gave vent to it in expressions which appeared to me so impertinent as to call for immediate rebuke."<sup>110</sup>

Two years later another agent was sent to Santo Domingo. Pierce had become President and had announced that "the policy of my administration will not be controlled by any timid forebodings of evil from expansion."<sup>111</sup> One of the points to which that policy looked was Samana Bay. Late in 1853 the Department of State sent William L. Cazneau on a mission of investigation and inquiry similar to those of Hogan and others.<sup>112</sup> At about the same time

<sup>109</sup> Webster to Walsh, second letter of Jan. 18, 1851, MS. Inst. Miss., I, 329-331.

<sup>110</sup> Walsh to Webster, No. 5, March 31, 1851, MS. Secret Service Vol., I, 383. For payment to Walsh, see Serial 619, 32 Cong. 1 Sess., Sen. Ex. Doc. 47, 32. His own account is in his article, "My Mission to Saint Domingo," loc. cit. His ten despatches are in MS. Secret Service Vol., I.

<sup>111</sup> Richardson, Messages and Papers, V, 198.

<sup>112</sup> Credence and power, June 17, 1854, MS. Credences, IV, 75, 76; instructions, Nov. 2, 1853, June 17, Dec. 18, 1854, Jan. 12, Feb. 3, 1855, MS. Inst. Sp. Miss., III, 32, 47, 66, 68; despatches, Jan. 23, 1854, first despatch, March 22, 1855, last despatch from Santo Domingo, June 25, 1855, report in Washington, MS. Special Service Vol., "W. L. Cazneau, 1854-1861," 587, 798, 806; record of compensation, Serial 844, 34 Cong. 1 Sess., H. Ex. Doc. 5, 29.



Jefferson Davis, Secretary of War, sent Captain George B. McClellan to make a "reconnaissance" of Samana Bay.<sup>113</sup>

The reports of these two agents were of such a character that Cazneau was made a secret commissioner to negotiate a treaty with Santo Domingo, June 17, 1854. The Pierce administration was ready to recognize Santo Domingo provided the United States could get a coaling station. John Quincy Adams' doctrine of recognition depended chiefly upon a fact, namely, that "nations which, after deliberately asserting their right to that character (i. e. of independent states), have maintained and established it against all the resistance which had been or could be brought to oppose it" should be recognized. Adams, indeed, held it to be "an obligation of duty of the highest order" to grant recognition in such circumstances.<sup>114</sup> Quite a different standard is set in Cazneau's instructions: "The strongest inducement for recognizing the Dominican Republic and entering into a treaty with her, is the acquirement of the advantages which the United States expect to derive from the possession and control of the tract of country on Samana Bay" <sup>115</sup> as a coaling station.

<sup>113</sup> Serial 1453, 41 Cong. 3 Sess., H. Doc. 43. Secretary of State Fish wrote to Grant about the "valuable report" of McClellan, Jan. 16, 1871. Serial 1440, Doc. 17, 3.

<sup>114</sup> Adams to Anduaga, Spanish minister, April 6, 1822, Moore, Digest, I, 88.

<sup>115</sup> Marcy to Cazneau, June 17, 1854, MS Inst. Sp. Miss., III 47-51

Cazneau was instructed to keep the mission strictly secret, but he was never successfully secretive, and it was hardly to be expected that his presence in the island for some months and the investigations of McClellan should have gone unnoticed. His first despatches back to the Secretary of State spoke of European intrigues against the United States and of the fact that Sir Robert Schomburgh, the British consul, had made an official call upon the president and cabinet of Santo Domingo to protest against any agreement for a coal depot for the United States. The "obstinate and unwarrantable interference of the British consul" prevented the success of the negotiations for a coaling station, and though a treaty of friendship, commerce, and extradition was signed October 5, 1854, the Dominican congress, reputedly as a result of British and French influence, amended it.

Exactly a year later the Department of State interested itself in the fate of the treaty. Jonathan Elliott, who had been an American commercial agent in Santo Domingo from 1849 to 1852,<sup>116</sup> was sent to the island. His instructions asserted that the department had never received a copy of the amendments, and he was directed to transmit a copy, with an opinion whether the Dominican government was likely to insist upon them. He was given full power to negotiate a new treaty in the sense of the earlier one, but he was directed to make another effort to secure Samana Bay. "There is reason to apprehend that the Dominicans

<sup>116</sup> Hasse, Index, I, 536, and documents there cited.

were deterred from acceding to our wishes on this subject, in part by unfounded apprehensions that we purpose to become a territorial proprietor in that quarter, and that, if allowed any such privileges as those desired, they would ultimately be converted into right of sovereignty, contrary to the will of the Dominican Government. These apprehensions are quite unfounded." Secretary of State Marcy made his denial very explicit.<sup>117</sup> A few days later Marcy expanded his instructions by referring to an amendment, reported by Cazneau, "which proposed to place Dominicans in this country, of all complexions, on the same footing as citizens of the United States." Elliott was to make especial efforts to induce the Dominican government to recede on that point.<sup>118</sup> His mission was not a success and recognition was again postponed.<sup>119</sup>

Four years later, however, Cazneau had a fresh mission to Santo Domingo as an agent of the Buchanan administration. The United States was laboring under a distinct disadvantage. It had a natural interest in Santo Domingo, which on occasion was a very active interest. Yet means for effective and regular intercourse were lacking. When it seemed likely that the United States might recognize Santo Domingo, the

<sup>117</sup> Marcy to Elliott, Oct. 5, 1855, MS. Inst. Sp. Miss., III, 69-72; also MS. Special Service Vol., I, 562.

<sup>118</sup> Id to Id., Oct. 9, 1855, MS. Inst. Sp. Miss., III, 72-74; also MS. Special Service Vol., I, 564.

<sup>119</sup> Elliott's despatches, numbered 1-7, Jan. 16-April 7, 1856, MS. Consular Desp. Santo Domingo.

administration of that country was usually cordial in expression and action. But when recognition failed, American interests sometimes felt the force of Dominican displeasure and reparation was difficult to obtain, for the black government stood on its dignity and refused to deal with a commercial representative of unofficial character. Such was the situation in 1859. European powers had recognized Santo Domingo. The United States had not. When certain claims<sup>120</sup> developed, the government would not deal with Elliott, the American consular representative. Cazneau had been living on the island<sup>121</sup> and was experienced in dealing with the government there; he was conversant with the situation and knew how best to approach the task. He was despatched, therefore, to secure reparation for the injured American interests, and to report on the condition of the country, with particular reference to whether the moment had come for recognition and a treaty.<sup>122</sup>

In the discharge of this mission Cazneau remained in the Dominican Republic for two years. The immediate details with which his mission was concerned changed with the course of events. The revolutionary rivalry of aspirants for power, the effects of these alternations in control upon the "color" of the govern-

<sup>120</sup> Those of the schooner *Charles Hill*, and of the *William A. Read*.

<sup>121</sup> Serial 1409, Rpt. 234, 178.

<sup>122</sup> Cass to Cazneau, April 7, June 4, 1859, MS. Inst. Sp. Miss., III, 124-128.

ment, the financial and commercial consequences of paper currency, and negotiations for the settlement of claims formed the subjects of his despatches. He recounted the activity of European governments, their difficulties with the successive presidents, and their tactics in achieving settlements of their disputes. Like most such agents, Cazneau overestimated the effect of his presence on the scene, which he thought had produced an entire change in situation for "this young and isolated government." His reports led to serious consideration by the Buchanan administration of the advisability of making a treaty.<sup>123</sup> But before a determination was reached, news arrived from Cazneau of plans for a Spanish protectorate.<sup>124</sup> Successive despatches reported the development of the Spanish guardianship into "an admitted fact," which brought American interests into "imminent danger." In view of this development, no treaty was authorized. Perhaps more surprising, Cazneau was given no instructions concerning the attitude of the American government toward the protectorate. When Seward took office, he promptly terminated Cazneau's service in an instruction of unusual brevity: "Upon receipt of this despatch you will regard your official functions as terminated and will return to the United States."<sup>125</sup>

<sup>123</sup> Cass to Cazneau, March 30, 1860, MS. Inst. Sp. Miss., II, 2.

<sup>124</sup> Cazneau to Cass, March 4, 1860, MS. Special Service Vol., I, 896. It took about five weeks for his despatches to reach Washington.

<sup>125</sup> Seward to Cazneau, No. 9, March 11, 1861, MS. Inst. Sp. Miss., II, 20. The fact that in two years only nine communica-

In recalling Cazneau, Seward was not abandoning interest in Santo Domingo. One of the points involved in Seward's April 1 "Thoughts for the President's Consideration" was to "demand explanations from Spain . . . categorically, at once."<sup>126</sup> This recommendation was based on the knowledge, derived from Cazneau's despatches, of the Spanish protectorate and of the move for reannexation. The very day after the "Thoughts," Seward sent a note to the Spanish minister in Washington, Tassara, in which he stated that if the subversion of the Dominican Republic were authorized by the Spanish authorities, the President would "be obliged to regard them as manifesting an unfriendly spirit towards the United States, and to meet the further prosecution of enterprises of that kind in regard to either the Dominican Republic or any part of the American continent or islands with a prompt, persistent, and, if possible, effective resistance."<sup>127</sup> On the same day instructions were drafted for a special agent who was to proceed to Santo Domingo to replace Cazneau. He was to go in the capacity of an observer, rather than a negotiator, and was cautioned not to commit the United States in matters of policy, though he was not "expected to deny or conceal the fact that

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tions went to Cazneau from Department of State is in itself significant. His instructions are in MS. Inst. Sp. Miss. III, 129-130; II, 1, 2, 18-19, 19-20; his despatches, June 19, 1859,—July 1, 1861, MS. Special Service Vol., 576-1068, *passim*.

<sup>126</sup> J. G. Nicolay and J. Hay, *Abraham Lincoln, a History* (New York, 1890), III, 445-447.

<sup>127</sup> Moore, *Digest*, VI, 515.

the Government of the United States has cherished a friendly regard to the Dominican Republic, and does not look with favor upon . . . its subversion."<sup>128</sup> The cancellation of this instruction was one of the evidences of the cooling off process through which Seward went in the succeeding months.

The year 1849 saw three missions to unrecognized states. Benjamin E. Green went to Santo Domingo on a mission of unusual and extraordinary character because of the discretionary authority conferred on him in the matter of recognition.<sup>129</sup> Five days after Green's appointment, A. Dudley Mann was authorized to proceed to Hungary.<sup>130</sup> In the course of the succeeding month Rev. R. R. Gurley was sent to Liberia.<sup>131</sup> Gurley's mission does not require extended comment because it had no unusual features. He had been in Monrovia at the foundation of the colony and had continued his interest in it.<sup>132</sup> On that basis he was selected. Though the colony was an American enterprise, the United States did not accord recognition as early as did European governments.<sup>133</sup> Both Great Britain and France had acknowledged the indepen-

<sup>128</sup> Seward to —, April 2, 1861, MS. Inst. Sp. Miss., II, 22-24.

<sup>129</sup> Clayton to Green, June 13, 1849, MS. Inst. Sp. Miss., I, 280; above, 446-450.

<sup>130</sup> Clayton to Mann, June 18, 1849, MS. Inst. Sp. Miss., I, 266.

<sup>131</sup> Clayton to Gurley, July 31, 1849, MS. Inst. Sp. Miss., I, 289.

<sup>132</sup> Gurley to Clayton, Sept. 22, 1849, MS. Special Agent Bundle.

<sup>133</sup> During the early years the Department of State communicated occasionally with the agent of the colonization society. See Clay to Thomas Randall, Jan. 17, 1829, MS. Desp. to Consuls, III, 31 A.



dence of Liberia before Gurley was sent out. Indeed, the action of these two countries spurred Clayton into activity. Liberia being a negro republic, however, he felt it was necessary to act cautiously. Gurley was sent to gather data to justify action on the part of the United States.<sup>134</sup>

His report was suffused with a warm benevolence and greatly influenced by sentimental considerations. On the basis of the "athletic, finely-proportioned and developed forms of the native Africans," a land "beautifully undulating, and interspersed with the most lovely rills of excellent water, clear as crystal, foaming and scolding among the rocks, presenting a thousand mill-seats," a "government of constitutional liberty pervaded by the Christian spirit," in the hands of a president "of distinguished talents and courage, of unaffected, plain, but polished manners," and other "intelligent and judicious" officers, he recommended recognition and a subsidy of fifty thousand dollars a year for ten years. Such a course of action "would be in harmony with the character and sentiments of this nation, and give stability, progress, and triumph to liberty and Christianity on the African shore." Recognition was not accorded, however, until the Civil War.<sup>135</sup>

<sup>134</sup> Clayton to Gurley, loc. cit. The despatches of Gurley, Sept. 22, 1849, from Monrovia upon his arrival, and Feb. 20, 1850, his report submitted in Washington, are in MS. Special Agent Bundle. See Serial 562, 31 Cong. 1 Sess., Sen. Ex. Doc. 75, 1-33.

<sup>135</sup> In his first annual message, Dec. 3, 1861, President Lincoln

The mission of A. Dudley Mann to Hungary was as extraordinary as that of Green and ultimately involved the United States in a heated diplomatic discussion. Mann had been in Europe for some years and had observed the course of the various revolutions of 1848. His travels from one place to another during those exciting days had given him an excellent opportunity to study the European situation. His reports had been colored with the enthusiasm which a genuine democrat naturally felt when the system of Metternich toppled over. The Taylor administration shared this enthusiasm, as did the public. The Hungarian revolt especially stirred the interest and sympathy of the American people. In instructing Mann, Clayton referred to this as a motive for the mission. "The eventful scenes which convulse Europe have been

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submitted for the consideration of Congress "the expediency of an appropriation for maintaining a chargé d'affaires" to Liberia. A diplomatic representative was authorized by an act approved June 5, 1862, but no appointment was made at once. Moore, Digest, I, 116. In the spring of 1862 the Liberian consul general at London approached Minister Charles Francis Adams concerning the negotiation of a commercial treaty. Seward instructed Adams, April 3, 1862, that the "President having submitted the subject of a recognition of the sovereignty of Liberia to Congress it would seem inexpedient to entertain a question about negotiations with the Government of that Country while the preliminary proposition is under consideration in the National Legislature." However, on Sept. 23, 1862, Adams was made a special agent to negotiate the treaty, which was concluded Oct. 21. Adams to Seward, March 7, Sept. 5, Oct. 23, 1862, MS. Desp. Gr. Britain, LXXIX; LXXX; LXXXI; Seward to Adams, April 3, July 29, Sept. 23, 1862, MS. Inst. Gr. Britain, XVIII, 161, 261, 310; see also Serial 3469, Doc. 40, 7.

watched from their commencement with close attention by the Government and people of the United States; and among them (as not the least interesting) the existing struggle between Austria and her ancient dependency, Hungary. In this desperate conflict Russia has chosen to assume an attitude of interference, and her immense preparations for invading and reducing the Hungarians to the iron rule of Austria, from which they desire to be released, give so serious a character to the contest as to awaken the most painful solicitude in the minds of Americans. This anxiety is natural on our part and is by no means inconsistent with the well-known and long established policy of non-interference in the domestic concerns of other nations which has ever animated and governed the councils and conduct of the American Government. If it should appear that Hungary is able to maintain the independence she has declared, we desire to be the very first to congratulate her and to hail with a hearty welcome her entrance into the family circle of nations." <sup>136</sup>

Anxiety was proper enough, but overeagerness to beat the trigger and be first over the line gave the mission its unusual character. Clayton in the next succeeding sentence after those which have been quoted admitted that the prospect of Hungarian success was "gloomy." It was this fact which made the stump speech, cast in the form of a diplomatic instruction,

<sup>136</sup> Serial 7330, Doc. 282, 3-8; and MS. Inst. Sp. Miss., 1' 266-275.

and the discretionary powers conferred upon Mann, take on the appearance of interference in the domestic concerns of Austria. There is not to be found in the flowing phrases of Clayton's instruction the cold and close regard for the realities which mark the instructions written by John Quincy Adams. But having committed the administration to the enterprise of sending someone to Hungary, Taylor and Clayton took the only possible course. To have sent a minister or chargé would have closed the door to retreat. Recognition would have been an accomplished fact. By sending a special agent it was possible for Webster later to turn the tables on Chargé Hülsemann and treat the Austrian protest as an impertinence.<sup>137</sup>

After the states of America had been recognized and the revolutionary period had passed in Europe, there was not for many years much occasion for the use of executive agents to unrecognized states.<sup>138</sup> In the

<sup>137</sup> See Moore, *Digest*, I, 221-234.

<sup>138</sup> In 1858, Wesley Miller received compensation as special agent to the Chincha Islands. Serial 1002, 35 Cong. 2 Sess., H. Ex. Doc. 5, 12. Fourteen years later, Feb. 17, 1872, Commander Richard W. Meade signed an agreement with the "great chief of the Bay of Pagopago," on one of the Samoan Islands, granting the United States the exclusive privilege of establishing a naval station in that harbor. "Though Commander Meade had no authority to enter into this agreement, the President thought proper to submit the instrument to the Senate," with the suggestion that the obligation of protection which the agreement seemed to imply should be modified. The Senate did not ratify the treaty, however, and it was not until 1878 that one was concluded. Serial 1691, Doc. 161, 5, 6-7, 9; For. Rel., 1894, App. I, 506; J. M. Callahan, *American Relations in the Pacific and the Far East, 1784-1900* (Baltimore, 1901), 137.

recognition of Rumania and Serbia the United States followed the lead of European states, and the matter was arranged without special investigation by executive agents.<sup>139</sup> The case of Cuba was different from others, inasmuch as the whole issue of recognition was merely incidental to the larger issues involved in the dispute and war with Spain.<sup>140</sup> The Great War produced a crop of new states, and brought again into prominence, after the lapse of so many years, the question of the recognition of new states. The first of these to attract the attention of the United States was Czechoslovakia. In this instance no emissary was sent, for the territory of the new state was in the physical control of Austria, and the government which received recognition in 1918 was located in Washington.<sup>141</sup>

<sup>139</sup> Moore, Digest, I, 114, 115; For. Rel., 1881, 36-37.

<sup>140</sup> When President Roosevelt decided to recognize Panama, the name of William I. Buchanan, as minister, was sent to the Senate, Dec. 12, 1903. Five days later it was confirmed, but the President was not notified, and on Dec. 19, a motion to reconsider the matter held up the notification. Consequently, Buchanan presented his credentials to the minister for foreign affairs, Dec. 24, as "envoy extraordinary and minister plenipotentiary . . . on special mission." It was not until Jan. 11, 1904, that the Senate defeated the motion for reconsideration, thereby making Buchanan a regular diplomatic officer. Cong. Record, 58 Cong. 2 Sess., XXXVIII, 172, 337; Serial 6582, 63 Cong. 2 Sess., Sen. Doc. 474, 512-514; *New York Tribune*, Dec. 20, 1903, Jan. 9, 12, 1904.

<sup>141</sup> Temperley, History of the Peace Conference, IV, 257-265. The date of complete official recognition is April 23, 1919.

Armenia was one of the states which was to be liberated and brought into the family of nations. But its status was peculiar. It had not won its own independence; it did not have sound political traditions; it was not in a position to undertake the full duties and obligations of a modern state. The British did not propose to support the situation indefinitely, and when they gave intimations of withdrawal from that area, the French showed no readiness to take their place. A suggestion was put in currency that the United States should accept the responsibility. The wealth and power of this country, its detached situation, the presumption that it had no imperialistic motives in the Near East,—all these were added to a certain idealism to explain why the United States might take a mandate for the control of Armenia. In order to investigate the situation, a special mission was despatched, in 1919, under the leadership of Major General James G. Harbord. The report discussed at length the political as well as the military situation in Armenia.<sup>142</sup> But events which had only a remote relation to the report of the commission ultimately proved the determining forces in shaping the policy adopted.

Finland had a happier situation. The fact that its location prevented it from being a battleground, the theory that it was joined to Russia only through a personal union, and the apparent readiness of the

<sup>142</sup> Serial 7671, Doc. 266; *New York Times*, Aug. 9, 14, 15, Sept. 9, Oct. 7, 12, 24, 25, 1919. The mission lasted from Aug. 20 to Nov. 11, 1919. *Who's Who in America*, XIV, 882.



revolutionary authorities in Russia to allow Finland to be independent combined to facilitate recognition. However, the recognition of the independence of Finland by Russia was not wholly unequivocal, and a state of war soon developed between the two countries. The United States planned to accord formal recognition, but pending the establishment of a legation, Thornwell Haynes, the American consul at Helsingfors, was appointed, May 24, 1919, commissioner to Finland "with the rank of minister plenipotentiary."<sup>143</sup>

Latvia and Esthonia declared their independence in November, 1918,<sup>144</sup> following the example of Lithuania, which had made such a declaration on February 16, 1918.<sup>145</sup> The official attitude of the government of the United States toward recognizing these states was shaped by the facts of the Russian situation. It was the hope of the American officials that a government would be established in Russia which would be generally recognized. Meanwhile the United States wished to avoid action which might lead to dismemberment of Russia. A later statement of the policy already adopted in 1919 was made by Secretary of State Colby, August 10, 1920: "We are unwilling that while it is helpless in the grip of a non-representative government, whose

<sup>143</sup> Register of the Department of State, 1922, 130; Springfield Republican, May 28, 1919.

<sup>144</sup> A. J. Toynbee, *Survey of International Affairs, 1920-1923* (London, 1925), 240.

<sup>145</sup> H. A. Gibbons, *Europe Since 1918* (New York, 1923), 210.



only sanction is brutal force, Russia shall be weakened still further by a policy of dismemberment, conceived in other than Russian interests." Acting Secretary of State Norman Davis said, "We feel that if we once begin to recognize the cutting up of this vast territory, it will be so split up that it will take over two hundred years of war to ever straighten it out." It was in accordance with this general policy that Secretary Lansing, October 15, 1919, informed the Lithuanian national council that, though "the United States is traditionally sympathetic with the national aspirations of dependent peoples, . . . it has been thought unwise and unfair to prejudice, in advance of the establishment of orderly, constitutional government in Russia, the principle of Russian unity as a whole." He, therefore, refused recognition to Lithuania, and subsequently to Latvia and Esthonia.<sup>146</sup>

At the same time the United States had a very lively interest in events in the Baltic area. The region had not been evacuated by the Germans, it was looked upon as a useful base of operations against the Bolsheviks, and others of the allied and associated powers had entered into diplomatic contact with the new states. In order, therefore, to secure American representation without according recognition, Commander John Alynne Gade was appointed October 1, 1919, "Commissioner of the United States for the Baltic provinces in

<sup>146</sup> Russian-American Relations, 1917-1920, ed. C. K. Cumming and W. W. Pettit (New York, 1920), 348-349.

Russia."<sup>147</sup> Commander Gade discouraged a policy of recognition, on the ground that these nations were not economically or strategically in a position to preserve their independence effectively.<sup>148</sup> Even after the Dorpat treaty between Russia and Esthonia, February 2, 1920, and the treaty between Russia and Latvia, signed at Riga, August 11, 1920, the United States withheld recognition, despite the fact that Great Britain, France, and Italy recognized the new states. After the resignation of Commander Gade, Mr. Evan E. Young was appointed commissioner, March 25, 1920.<sup>149</sup> Relations were held on an informal basis until the final recognition of Esthonia, Latvia, and Lithuania, July 27, 1922.<sup>150</sup>

Albania had had a checkered career before the war. Recognized by the council of ambassadors of the European powers, July 29, 1913, as an independent principality, William of Wied ascended the throne in 1914, only to abandon it when domestic difficulties, foreign eagerness for portions of his realm, and the outbreak of the World War discouraged him. During the war the little state suffered the full consequences of its unhappy ethnic and religious lack of unity and

<sup>147</sup> Department of State, Appointment Bureau; *New York Times*, Oct. 8, 22, 1919, June 24, 1920; *Who's Who in America*, XIV, 762.

<sup>148</sup> Gibbons, *Europe Since 1918*, 220-221.

<sup>149</sup> Register of the Department of State, 1922; *Who's Who in America*, XIV, 2099; see also *New York Times*, Oct. 27, 1920.

<sup>150</sup> *New York Times*, July 29, 1922.

its unfortunate geographical position,—not to speak of its small size. Parts were occupied by the Austrians, the Italians, the French, and the Greeks. In 1917 Italy proclaimed Albania independent, but under Italian protection. After the armistice it seemed likely that Albania would be partitioned. President Wilson offered diplomatic opposition, and the Albanians offered armed resistance. The prime minister of Italy, Giolitti, spoke, June 28, 1920, of Albania as independent, and intimated that Italy would abandon the mandate which had never formally gone into effect. In August, 1920, Italy reached an agreement with Albania, recognizing its full independence, and promising to withdraw all Italian troops. Finally, Albania was recognized as independent by the states of Europe, and admitted to the League of Nations, December 17, 1920.<sup>151</sup> The United States, meanwhile, took no action by way of recognition. On April 27, 1922, however, Mr. Maxwell Blake was appointed commissioner to Albania. Shortly thereafter Albania was formally recognized and Mr. Blake became envoy extraordinary and minister plenipotentiary.<sup>152</sup>

<sup>151</sup> Temperley, *History of the Peace Conference*, IV, 338-347.

<sup>152</sup> *Who's Who in America*, XIV, 288; *New York Times*, July 28, 1922. In its public statement, the Department of State said, "The Government of Albania has been recognized by the principal governments of Europe, including its immediate neighbors, and in extending recognition on its part, the United States takes cognizance of the successful maintenance of a national Albanian government."

II. *Agents to Unrecognized Governments*

The number of special agents who have been sent to unrecognized governments is fewer than the number sent to unrecognized states. The reasons are not far to seek. Practically the only way to deal directly with an unrecognized state is through executive agents, because a formal mission would involve recognition. This bar to the use of a regular officer does not exist in the case of unrecognized governments. When there occurs a change of government in a country to which the United States has a regularly accredited mission, the American officer in charge may hold communication, both written and oral, with the *de facto* authorities without implying recognition. The continuance of the mission does imply continued recognition of the state, but not necessarily of its new rulers.<sup>153</sup> On various occasions, however, it has seemed desirable to discontinue the regular mission and to substitute a special agency.

The first instance of this sort in our history was the mission of Anthony Morris to Spain in 1813. Morris was an old and dear friend of Mrs. Madison and sought her influence to secure him a diplomatic appointment.<sup>154</sup> Madison found no post in the regular service available, but wrote Morris, May 5, 1813, "Would a *confidential* service for a time at Cadiz, in an informal character, be acceptable to you? The

<sup>153</sup> Moore, Digest, I, 235.

<sup>154</sup> A. C. Clark, *Life and Letters of Dolly Madison* (Washington, 1914), 14, 272, 451.

service is of an important nature and enjoins a respectable though unaccredited and in some respects unavowed agent." <sup>155</sup>

The circumstances which called for such a mission were unique. The United States from its foundation had been involved in difficulties with Spain. Monroe told Morris that "a retrospect of the conduct of the two nations towards each other, will show that the United States have received many injuries from Spain, without retorting them; that they have on the contrary manifested great forbearance under a strong sense of injury, in the hope of producing a different disposition and policy on the part of the Spanish Government towards the United States." <sup>156</sup> A number of matters were pending: first, the claims for spoliations resulting from the earlier Napoleonic war; second, claims arising from the suppression of the right of deposit in New Orleans in 1802; third, the West Florida controversy. With regard to the first, Spain had negotiated a treaty in 1802, but had not ratified it. So far as the second was concerned, Spain, after the cession of Louisiana to the United States, did not appear to be interested. As to West Florida, the terms of the treaty of San Ildefonso, <sup>157</sup> by which Louisiana was retroceded by Spain to France, were such that the cession "evidently comprised West Florida." By the

<sup>155</sup> Madison to Morris, May 5, 1813, *Nation*, LXVI, 281.

<sup>156</sup> Monroe to Morris, June 9, 1813, *Nation* LXVI, 281-283.

<sup>157</sup> Oct. 1, 1800.

treaty of 1803 France ceded to the United States the territory "in the same extent in which they had received it. It is distinctly understood had France retained the province she would have claimed as being within its limits the whole territory between Perdido on the east and the river Bravo on the west, and that Spain would have acquiesced in those limits. Against the United States however her government has set up very different pretensions. It has insisted that west Florida on the Eastern, and a vast extent of territory on the western side of the Mississippi Eastward of the Rio Bravo formed no part of the province as ceded to the United States."<sup>158</sup>

This situation was almost intolerable, and matters were getting no better. After the Napoleonic invasion of Spain, while the battle for the possession of the throne was being fought out, the United States assumed an attitude of strict neutrality, and Chargé Erving quit Madrid in May, 1810. Meanwhile the patriot movement in Spain came into the hands, in a titular sense, at least, of the regency of Cadiz, which was closely linked up with England. The regency had pursued the old policy of Spain toward the United States, and there was reason to fear that now the United States was at war with Great Britain, the patron of the regency, a still less desirable policy might be adopted—especially in relation to Florida. If, by any turn of fortune, Great Britain should get possession of East Florida, the chances of Spain

<sup>158</sup> Monroe to Morris, June 9, 1813, loc. cit.

recovering it were regarded as remote, and the possibility that it might come to America was thought even more remote.

Under these circumstances it seemed wise to despatch an agent whose especial duty would be "to impress the Regency with a just idea of the friendly policy which has been invariably pursued by the government of the United States towards Spain, under circumstances that were calculated to produce a different result and of their disposition to persevere in that policy; if the Regency by maintaining as it has hitherto done, the unjust system of the former government, does not prevent." Specifically, the United States wanted East Florida and the settlement of claims. The adoption of the new policy was not to be left to the mere reasonableness or good nature of the regency. Morris' instructions carried a distinct menace. "The policy of her [Spain's] former government furnishes an instructive lesson to the present one. The right of the United States to the free Navigation of the Mississippi, was denied by it and resisted until they were prepared and resolved to take it by force." Had it been longer denied, "can any one doubt that the consequences of such resistance would have produced war or what the consequences of that war would have been? Can any one doubt should the Regency at Cadiz continue to resist the just claims of the United States, what will be the result of such a policy? Possessing so many and such vast provinces to the South, as Spain does, all of which it is in the power of the



United States to separate from her, is it for her interest to expose herself to that danger by persevering in injustice?" <sup>159</sup>

Morris was to make clear that "the question in regard to West Florida is settled. There can be no further discussion on that point." Having taken possession, the United States was not willing to let go. East Florida was a different matter. Though the regency was not the recognized government of Spain in the eyes of the United States, nevertheless, "from it the President is willing to accept the Territory claimed by Spain . . . Eastward of the Mississippi, in discharge of the claims of the United States to indemnity or he will receive possession of and hold it in trust subject to future negotiation and adjustment." This was to be arranged not by formal treaty, which would involve recognition, but by an executive agreement. "The effect of such an informal arrangement would be the same as if it were done by treaty. . . . On receiving from the Regency an order on the Spanish Governor at St. Augustine to deliver East Florida to the United States you may give assurances that it will be received either in discharge of the claims to indemnity or in trust." <sup>160</sup> Here, then, is the unique situation,—an executive agent empowered to make an executive agreement by which the United States was to acquire title to land from a government it would not recognize! Morris' actual proposal fell short of

<sup>159</sup> Monroe to Morris, June 9, 1813, loc. cit.

<sup>160</sup> Ibid.

the more extreme suggestion; he limited himself to a proposal for American occupation, without impairing either the "rights" or "interests" of Spain.<sup>161</sup> As might have been foreseen, the effort was futile.<sup>162</sup>

Reference has already been made to A. Dudley Mann's mission to Hungary.<sup>163</sup> Before being sent upon that errand he had been traveling about Europe, and especially Germany, doing diplomatic odd jobs. In the midst of his work the revolutions of 1848 broke out, and he improved the opportunity to keep Secretary of State Buchanan informed. From Frankfort he reported upon the sweep of the revolution through the German states. He had gone thither "to be present at the great Convention . . . to deliberate upon a plan of Constitution for a central government." He hoped the Constitution of the United States would furnish the model, and "without having attempted to intrude" his opinions, he privately pressed that point. Mann was a volunteer in two senses. He had gone to Frankfort without instructions to do so, because, since Germany was to be the leading state of Europe, it was "of

<sup>161</sup> Morris to Luyando, Feb. 10, 1814, MS. Special Agent Bundle.

<sup>162</sup> The despatches of Morris are in MS. Special Agent Bundle; his recall, Monroe to Morris, Aug. 11, 1814, MS. Domestic Letters, XVI, 179-180; and another letter, id. to id., same date, MS. Inst. U. S. Mins., VIII, 19. The fact that Erving was not promptly received as minister prolonged Morris's mission. Monroe to Morris, July 18, Nov. 30, 1815, *ibid.*, VII, 412; VIII, 11-12.

<sup>163</sup> Above, 462-464.

primary importance . . . that a vigilant eye should be kept to our interests during the formation of this union.”<sup>164</sup> His position was regularized by a blanket instruction to send “information . . . respecting everything of importance that transpires within the sphere of your observation.”<sup>165</sup> He was a volunteer, also, in his relations with members of the convention. His eagerness to see American patterns adopted led him to prepare “a plan of Constitution for the contemplated Union,” which was translated into German, “and although it has not been published, . . . its features are generally understood and are getting so popular that the Legislative, Executive, and Judicial branches will be established upon the basis which it proposes. Where I was drawn into conversations at Frankfort, upon the subject of a system of central government for Germany, I communicated my sentiments unreservedly. Upon one occasion they were taken down, and, subsequently, presented to the consideration of the Assembly, though not as correctly as was desirable, in a pamphlet.”<sup>166</sup>

Mann was ever eager to have the United States manifest its active interest in liberal progress, and writing on July 4, 1848, he urged that the new govern-

<sup>164</sup> Mann to Buchanan, No. 14, April 1, 1848, MS. Desp. Mann.

<sup>165</sup> Buchanan to Mann, May 29, 1848, MS. Inst. Dip. Agents, etc., Germany, etc., I bis, 12; also *ibid.*, 13-16.

<sup>166</sup> Mann to Buchanan, with enclosures, No. 29, July 18, 1848, MS. Desp. Mann. His draft of a constitution and the pamphlet are among the enclosures.

ment be immediately recognized "in conformity with our established international policy," and that the legation at Berlin be promptly moved to Frankfort. The despatch reached Washington July 29,<sup>167</sup> and a week later, August 5, President Polk sent a message to the Senate nominating Andrew J. Donelson, who had been minister at Berlin, to be envoy extraordinary and minister plenipotentiary to the "Federal Government of Germany" at Frankfort.<sup>168</sup> The Senate gave prompt approval,<sup>169</sup> and with recognition, Mann's functions ceased.

The brilliant colors in which Mann had painted the German situation faded rapidly. The parliament of Frankfort lost time in futile discussions, while Austria and Prussia effectively decided the issue against a united Germany. When the Polk administration was succeeded by that of Taylor, the new Secretary of State desired Mann's views "in detail, of the affairs of Europe." In response, Mann sent a comprehensive survey. His picture of the German situation was now

<sup>167</sup> Mann to Buchanan, No. 27, July 4, 1848, MS. Desp. Mann.

<sup>168</sup> Richardson, Messages and Papers, IV, 605.

<sup>169</sup> Aug. 9, 1848, Sen. Ex. Jol., VII, 467, 469, 475. Mann renewed his recommendation in a despatch dated July 18, stating that the new provisional government expected prompt recognition. One note of caution appeared: "In the act of recognition, however, great care should be taken that no overt commitment should be made, to prejudice the present validity of our Conventions with Hanover, Oldenburg, and Mecklenburg-Schwerin." The despatch arrived Aug. 7, after Donelson's nomination, while his name was before the Senate. No. 29, MS. Desp. Mann.

quite different. He recounted the promising beginnings, and proceeded: "Since then, however,—some-what recently,—the governments of Austria, Prussia, and Bavaria have positively refused to acknowledge the legitimacy of the Central, self-constituted, Power at Frankfort; while the reigning sovereigns of Hanover, Saxony, and Wurtemberg declined observance of its mandates. This authority, consequently, is not the exponent of the public will of Germany; nor can it contract stipulations which would be binding upon Germany. Its character is pseudo, and its acts must be null and void as concerns Germany. . . . If we negotiate with Germany, it ought to be with the states respectively, and in their sovereign capacity."<sup>170</sup> Here was the proponent of instant recognition a year before advising the withdrawal of recognition. Information from other sources confirmed that view, and Minister Donelson was instructed that the President had deemed it proper to terminate the German mission.<sup>171</sup>

At the same time the liberal sentiment of America made the government eager to watch the liberal embers in Germany, even if they were dying. For that reason Gales Seaton, who since March, 1849, had been secretary of legation,<sup>172</sup> was requested to remain in Frank-

<sup>170</sup> Mann to Clayton, May 10, 1849, MS. Desp. Mann. It was received sometime in June, 1849.

<sup>171</sup> Clayton to Donelson, No. 35, Sept. 18, 1849, MS. Inst. Prussia, XIV. The mission to Prussia was restored and E. A. Hannegan was sent as minister. Nomination, March 3, 1849, Sen. Ex. Jol., VIII, 60, 70.

<sup>172</sup> Sen. Ex. Jol., VIII, 83, 84, 90.

fort as "Confidential Agent" and "to note carefully the movements of Germany and its separate States in regard to contemplated, or probable political arrangements and combinations." The purpose of his stay was to be kept "strictly private and confidential."<sup>173</sup> Seaton remained until the end of July, 1850, reporting at intervals in an ever more and more discouraged tone. He found "an indifference to public affairs which can with difficulty be comprehended by an American." The German governments seemed "resolved to weary out hope, to disgust by delay, until the people will consent to return to the old system, by which all fruits of the late liberal efforts will be blasted, and Germany will be quietly reinstated in the position of a strong monarchical government, without real popular representation, and without most of the rights and privileges which we are accustomed to regard as fundamental and necessary." The United States had been represented on the ground when the revolution broke out; its representatives lingered until all hope was gone.<sup>174</sup>

<sup>173</sup> Clayton to Seaton, "private," Oct. 1, 1849, MS. Inst. Prussia, XIV, 177.

<sup>174</sup> The despatches of Seaton, numbered 1-6, are in MS. Desp. Germany, I. The quotations are from No. 6, July 31, 1850. Despite the hopelessness of continuing a mission at Frankfort, there were protests in the Senate and the House of Representatives at the "suppression" of the mission, held by some to be "arbitrary and unwarrantable." Others insisted on renewal because "there is the fountain of liberal principles." Cong. Globe, 31 Cong. 1 Sess., 583, 745, 746; *ibid.*, App., 46.

In 1857 the United States found itself without any representative whatever in Central America. Solon Borland had been accredited to all five of the republics in April, 1853. After meeting difficulties in Nicaragua, where he was injured while in performance of diplomatic duty, and his return home in 1854, the practice of having one man represent the United States in all the republics was discontinued, yet no one was sent to Costa Rica or Honduras until 1858, or to Salvador until 1863. John L. Marling had been appointed to Guatemala in 1854, and his successor, W. E. Venable, was appointed March 14, 1857, but was not yet on the ground.<sup>175</sup> As for Nicaragua, John H. Wheeler had gone out in 1854 as minister, and had recognized the Walker régime, a recognition, however, which he was instructed shortly to withdraw. He remained for some time in unofficial communication with the unrecognized authorities, but at length he also returned.<sup>176</sup>

This produced an awkward situation. Walker and the Americans associated with him were supposed to be in dire straits, being "left by the reverses of war without the means of returning home." The American government displayed a good deal of solicitude for their safety and welfare. At the same time the belief was prevalent in Central America that the United States was not without complicity in the Walker episode, and inferences unfavorable to the strict neutrality of the United States were being freely drawn.

<sup>175</sup> Cass to Jones, May 15, 1857, MS. Inst. Sp. Miss., III, 85-95.

<sup>176</sup> Moore, Digest, I, 140-144.



The Buchanan administration displayed much nervous concern over the fact that there was no one to controvert these inferences and to assert that "for the existence of this conflict the United States is in no sense whatever responsible." Furthermore, a project had "grown out of the domestic disturbances in that Republic which looks to its extinction as an independent state, and the absorption of its territory by the adjoining Republics," and this partly on the assumption that if Nicaragua remained intact, the United States would take control. Such a project, based on such motives, or pretexts, was of great importance. Again, the boundary dispute between Costa Rica and Nicaragua was likely to have a bearing upon the proposed interoceanic canal, and upon the rights acquired in that region by American citizens. The route via the San Juan River and Lake Nicaragua had been closed; it was of importance to the development of the American West that it should be reopened.<sup>177</sup>

This was a rather critical situation. There were altogether too many interests involved to allow matters to drift without any American representative on the spot. But the return of Wheeler to the United States had made it impossible to accredit any official successor without recognition. No recourse was open, therefore, save to appoint a special agent and entrust the management of matters to him. The agent selected was Thomas Hart Benton's son-in-law, Wil-

<sup>177</sup> Cass to Jones, May 15, July 30, 1857, MS. Inst. Sp. Miss. III, 85-95, 96-106.

liam Carey Jones.<sup>178</sup> Jones had no special training; he had been "but a short time ago the editor of a Federal newspaper in New Orleans,"<sup>179</sup> Nor had he insight, or temper, or aptitude for the task.<sup>180</sup> His reports were voluminous but not discriminating, and he was quite unable to deal effectively with the officials with whom he came in contact.<sup>181</sup>

The next year, 1858, an executive agent was sent to Mexico to establish contact with the unrecognized government of Juarez. The circumstances were in some respects similar to those which precipitated the Jones mission to Central America. Mexico was in the throes of revolution. The struggle between Miramon and Juarez was producing a condition bordering on anarchy. Miramon, who held the capital, was unwilling to do anything to protect American lives and property. The regularly accredited American minister, Forsyth, had been entirely unable "to secure redress for the wrongs which our citizens had endured, notwithstanding his persevering efforts. And from the temper manifested by the Mexican Government he

<sup>178</sup> Polk, *Diary*, II, 427, 445; III, 13; Cass to Jones, *loc. cit.*

<sup>179</sup> Polk, *Diary*, II, 445; III, 13.

<sup>180</sup> W. O. Scroggs, *Filibusters and Financiers* (New York, 1916), 356; M. W. Williams, *Anglo-American Isthmian Diplomacy, 1815-1915* (Baltimore, 1916), 255, n. 102.

<sup>181</sup> His despatches are in MS. Special Service Vol., I, 15-555; instructions, MS. Inst. Sp. Miss., III, 85-95, 96-106, 107-108, 108-109 (recall, Dec. 29, 1857); see also Cass to Mirabeau B. Lamar, appointed minister to Nicaragua, April 15, 1858, MS. Inst. U. S. Mins. Am. States, XV, 309-311.

had repeatedly assured us that no favorable change could be expected. . . . It was therefore deemed proper to sanction his withdrawal of the legation from the City of Mexico."<sup>182</sup> Indeed, Buchanan felt that war between the United States and Mexico would become necessary if the conservatives should win the civil war.<sup>183</sup>

The only prospect of improved relations was to be found in reprisals or in relations with Juarez, head of the constitutional government. Buchanan held that reprisals could be justified only if every other expedient had been tried. There was one peaceful recourse,—to test the disposition of the Juarez government, especially if there was hope for its ultimate triumph. "This success became so probable that in January last [1859], I employed a reliable agent to visit Mexico and report to me the actual condition and prospects of the contending parties."<sup>184</sup> That agent was William M. Churchill.<sup>185</sup> No other means of inspecting

<sup>182</sup> Buchanan's second annual message, Dec. 6, 1858, Richardson, *Messages and Papers*, V, 513. See above, 373.

<sup>183</sup> Message of Dec. 6, 1858, loc. cit. In his third annual message, Dec. 19, 1859, Buchanan said, "Had this been an established government, with its power extending by the consent of the people over the whole of Mexico, a resort to hostilities against it would have been quite justifiable, and, indeed, necessary." Richardson, *Messages and Papers*, V, 564.

<sup>184</sup> Message of Dec. 19, 1859, loc. cit.

<sup>185</sup> J. M. Callahan, "The Mexican Policy of Southern Leaders under Buchanan's Administration," *Ann. Rpt. Am. Hist. Ass.*, 1910, 142. See also Wilson, "President Buchanan's Proposed Intervention in Mexico," 690.

the character and prospects of the Juarez government existed save the employment of such an agent. Churchill lost no time in getting in touch with Juarez. His reports were favorable to the recognition of that leader,<sup>186</sup> and he also transmitted a statement by Juarez which disclosed a readiness to cede Lower California and make favorable arrangements for transit routes across the isthmus of Tehuantepec and elsewhere.<sup>187</sup>

After Churchill's reports had been received, Robert McLane was appointed minister and given "discretionary authority to recognize the government of President Juarez."<sup>188</sup> McLane agreed with Churchill, and on April 7, 1859, presented his credentials to Juarez on the ground that his government was "the only existing government of the Republic." Nevertheless, there remained some likelihood that it would be necessary to communicate with Miramon's party, from which recognition had been withdrawn by the recognition of Juarez. This eventuality seemed the more likely because most of the European diplomats had remained with the conservative government. Not only so,—they had taken measures to bring the Mexican struggle to an end. Their action touched the sensibilities of the Buchanan administration at two points. It looked like European intervention,—

<sup>186</sup> Jan. 21, Feb. 21, March 8, 1859, MS. Secret Service Vol., I, 778, 800, 826.

<sup>187</sup> Callahan, "Mexican Policy under Buchanan," 142.

<sup>188</sup> Richardson, Messages and Papers, V, 564.

possibly forcible, but certainly diplomatic,—in a purely American, not to say domestic, matter. In the second place, the refusal of the United States to cooperate gave those who sought such opportunities the chance to assert that the United States desired the continuance of the ruinous struggle, in order to weaken her neighbor.

Juarez was established in Vera Cruz, and there were decisive reasons why the American minister should remain there. At the same time it was essential that an American representative should be present at the meetings of the diplomatic corps to explain the position of the United States on mediation or intervention, and also to explain to Miramon and his party, as well as to the military chiefs of the liberals, who were closing in on Mexico City, the attitude of the American government. Any contact with the Miramon government from which the United States had withdrawn its recognition must, in the nature of the case, be quite informal. This double duty was assigned to Henry R. de la Reintrie in 1860.<sup>189</sup> The Department of State made the appointment at the request of McLane, and sketched out the general tenor of his instructions, but the final instructions were written by McLane himself.<sup>190</sup>

<sup>189</sup> Cass to La Reintrie, Sept. 20, 1860, MS. Inst. Mexico, XVII, 305-306; Cass to McLane, No. 39, Sept. 20, 1860, *ibid.*, 306-318; *id.* to *id.*, No. 40, Sept. 20, 1860, *ibid.*, 319; McLane to Cass, Dec. 21, 1860, MS. Desp. Mexico, XXVI; McLane to La Reintrie, Dec. 7, 15, 1860, *ibid.*; Serial 1129, 37 Cong. 2 Sess., H. Ex. Doc. 39, 11.

<sup>190</sup> Cass to McLane, No. 40, *loc. cit.*, McLane to Cass, *loc. cit.*

La Reintrie proceeded to San Angel, where the diplomatic corps was located, and at once informed them that the United States would "resist any forcible attempt to impose a particular adjustment of the existing conflict against the will and sanction of the people of Mexico,—and also any forcible intervention by any power, which looks to the control of the political destiny thereof." Without challenging the right of European powers "to wage honorable warfare for a sufficient cause" or "to demand redress for injuries inflicted on their respective subjects, and if need be, to enforce such demands," the United States "does deny them the right to interfere directly or indirectly with the political independence of the Republic of Mexico, and it will, to the extent of its power, defend the nationality and independence of said Republic."<sup>191</sup> These were bold words, almost on the eve of the great intervention, and they were fully authorized by La Reintrie's instructions, but when the European powers did use force somewhat later, Seward did not support in action the bold pronouncements of the Buchanan administration.<sup>192</sup>

Mexico has, since that time, furnished opportunities for many special agencies. When the long rule of Diaz gave place to a period of revolution and disorder,

<sup>191</sup> La Reintrie to Elgee, chargé, Dec. 28, 1860, enclosure A, La Reintrie to representatives of foreign powers in Mexico, MS. Desp. Mexico, XXVII.

<sup>192</sup> Callahan, "Mexican Policy under Buchanan," 150. The voluminous reports and enclosures from La Reintrie are all in MS. Desp. Mexico, XXVII.



the United States was inevitably involved. This circumstance would not necessarily have given rise to a special mission but for the fact that at a critical stage in Mexican affairs political changes in the United States altered the normal course of events. Henry Lane Wilson, the regularly accredited representative, remained in unofficial relations with the new Huerta government, which was not accorded recognition by the Taft administration. He continued to act in the same capacity for some time under President Wilson. But there was a breach between the policy of the ambassador and that of the new President, which culminated in an announcement, August 4, 1913, that his resignation had been accepted, to which the somewhat gratuitous explanation was appended that "the part which he felt it his duty to take in the earlier stages of the recent revolution in Mexico would make it difficult for him to represent the views of the present administration in view of the situation which now exists."<sup>193</sup>

Henry Lane Wilson had favored the recognition of Huerta, but President Wilson was interested more in the establishment of a principle than in a speedy settlement of the recognition question. He felt that the

<sup>193</sup> For. Rel., 1913, 817-818. Henry Lane Wilson had stated that the Huerta government had taken office "in accordance with the Constitution and precedents" (Feb. 20, March 12, 1913, *ibid.*, 725, 772), and he endeavored "in all possible ways, and frequently on my own responsibility, to aid this Government to establish itself firmly" (Feb. 26, 1913, *ibid.*, 742). He continually pressed for recognition (*ibid.*, 1431, *index*).



United States government could cooperate only with just governments "based upon law, not upon arbitrary or irregular force. . . . Just government rests always upon the consent of the governed. . . . We shall look to make these principles the basis of mutual intercourse. . . . We shall lend our influence of every kind to the realization of these principles in fact and practice. . . . We can have no sympathy with those who seek to seize the power of government to advance their own personal interests or ambition. . . . We shall prefer those who act in the interests of peace and honor, who protect private rights and respect the restraints of constitutional provision."<sup>194</sup> This was a doctrine of legitimacy, — constitutional legitimacy. Like other legitimist doctrines it involved a judgment of a domestic legal question by a foreign government; the United States undertook to decide who had the best constitutional right to control the Mexican government.

For the purpose of utilizing this "influence of every kind" some agent was required. The ambassador having retired, the chargé being in scarcely a better position to represent the new policy, it was necessary to resort to an agent who could speak with fullest authority without implication of recognition. "Accordingly," said President Wilson, in a message to Congress, August 27, 1913, "I took the liberty of

<sup>194</sup> Statement of March 11, 1913, E. E. Robinson and V. J. West, *The Foreign Policy of Woodrow Wilson, 1913-1917* (New York, 1917), 179-180.

sending the Honorable John Lind, . . . as my personal spokesman and representative, to the City of Mexico.”<sup>195</sup> His credentials and his instructions were both signed by the President of the United States.<sup>196</sup> The first form of influence was to be “advice” to those who were “exercising authority or wielding influence in Mexico” looking toward a satisfactory settlement. To that end Mr. Lind was to urge “an immediate cessation of fighting,” and “an early and free election,” in which General Huerta should agree “not to be a candidate.”<sup>197</sup> At first the Mexican authorities were inclined to discourage the coming of an unofficial envoy. The acting minister of foreign affairs informed the American chargé that if Mr. Lind did “not properly establish his official character, or if he” was “not the bearer of recognition . . . , his sojourn” would “not be pleasing.”<sup>198</sup> The response was that Mr. Lind came as “adviser to the Embassy,” but after his arrival no more was heard of that position or title.<sup>199</sup> The Mexican minister, having noted the fact that his authority was authenticated by the signature of President Wilson, made no further difficulties about entering into communication with the “confidential

<sup>195</sup> *New York Times*, Aug. 28, 1913; For. Rel., 1913, 821.

<sup>196</sup> Gamboa, secretary of foreign affairs, to Lind, Aug. 16, 1913, For. Rel., 1913, 823-827.

<sup>197</sup> For. Rel., 1913, 822.

<sup>198</sup> For. Rel., 1913, 819.

<sup>199</sup> Bryan to diplomatic officers of the United States, Aug. 8, 1913, For. Rel., 1913, 819-820.

agent,'<sup>200</sup> though he strongly objected to the nature and content of the advice.<sup>201</sup> However novel President Wilson's policy appeared to be, it was scarcely more than an application to Mexico of methods employed before in Central America;<sup>202</sup> and as the advice of the agent was not accepted, other forms of influence were employed for the purpose of compelling the withdrawal of Huerta from office.<sup>203</sup> Before Huerta succumbed to pressure Mr. Lind retired from his post.<sup>204</sup>

The failure of this mission did not put an end to the use of executive agents. Having taken the responsibility of dictating the overthrow of one government, President Wilson was under the necessity of discovering the faction most eligible to be its successor and of opening the way for the recognition of that successor. He realized that the difficulties would be great; for he said, "While we wait, the contest of the rival forces will undoubtedly for a little while be

<sup>200</sup> Gamboa to Lind, loc. cit.

<sup>201</sup> For. Rel., 1913, section on Mexico, passim.

<sup>202</sup> Cf. Dawson's mission to Nicaragua in 1910, below, 506-508.

<sup>203</sup> For. Rel., 1913, 849, 856, 864.

<sup>204</sup> Ibid., 822. Mr. Lind sailed from Mexico early in April, 1914, and arrived in Washington the middle of the month. *New York Times*, April 14, 1914. He was paid from the secret fund, but the amount was not revealed by Department of State. Cong. Record, 63 Cong. 2 Sess., LI, 12172-12173. Lind testified in 1920 before the committee of the Senate investigating Mexican affairs. Serial 7666, 66 Cong. 2 Sess., Sen. Doc. 285, 2317. For testimony concerning him, see Serial 7665, Doc. 285, 793, 811, 1396; Serial 7666, Doc. 285, 2007, 2296, 2431, 2435, 2708.

sharper than ever, just because it will be plain that an end must be made of the existing situation, and that very promptly.”<sup>205</sup> The confusion continued dishearteningly long. About two years later President Wilson eloquently described the chaos, and declared that the government would “lend its active moral support to some man or group of men, if such may be found, who can rally the suffering people of Mexico to their support in an effort to . . . return to the constitution of the Republic so long in abeyance, and set up a government at Mexico City which the great powers of the world can recognize and deal with.” He closed his declaration with a clear threat of intervention.<sup>206</sup>

Meanwhile the separatism of the several factions, their *de facto* dominance in local areas, and the numerous American interests affected by their activities made the despatch of an agent to each one almost inevitable. Even before Mr. Lind came home, other informal agents had to be employed. In 1914 and 1915, “in hundreds of cases” where “action in behalf of American citizens was necessary,” consuls and special representatives were instructed “to make representations to the civil or military chief in control of his district.”<sup>207</sup> The first of such special representatives was George C. Carothers. He had long been

<sup>205</sup> Message of Aug. 27, 1913, For. Rel., 1913, 823.

<sup>206</sup> Statement of President Wilson, June 2, 1915, *ibid.*, 1915 695.

<sup>207</sup> *Ibid.*, 837.

familiar with many of the leading figures in the revolution, and had, therefore, special competence.<sup>208</sup> The Secretary of State, in a circular to consuls, explained that his work was "of a nature which the Department feels cannot well be delegated to officers assigned to specific posts with other duties to perform" and such appointments are "in no way intended as a reflection upon any officer in the Service."<sup>209</sup> He began his work in December, 1913, upon urgent telegraphic instructions to confer "with General Villa and other leaders, for the purpose of insuring, in so far as may be possible, the lives and property of Americans and other foreigners."<sup>210</sup> From that time on he was in constant touch with Villa and Carranza, performing a wide range of duties for the Department of State.<sup>211</sup>

In July, 1914, Leon J. Canova was sent "to act in conjunction with Mr. George C. Carothers, who for some time past has been engaged in special and confidential work in northern Mexico."<sup>212</sup> He was familiar with Spanish, having had long residence in Cuba as a journalist.<sup>213</sup> He proceeded to Saltillo and

<sup>208</sup> Ibid., 1914, 846.

<sup>209</sup> Ibid., 553.

<sup>210</sup> Ibid., 1913, 902.

<sup>211</sup> Ibid., 1914, 1915, sections on Mexico, *passim*. For Carothers' testimony before the committee of the Senate, see Serial 7665, Doc. 285, 1755.

<sup>212</sup> For. Rel., 1914, 553.

<sup>213</sup> Who's Who in America, XII, 612.

discussed the "A B C" mediation with Carranza; he attended the convention in Aguascalientes which selected General Gutiérrez as provisional president; subsequently he was present at the first meeting of Villa and Zapata.<sup>214</sup> He continued this service until he became assistant chief of the division of Latin American affairs and chief of the division of Mexican affairs in the Department of State, in April and July, 1915.<sup>215</sup>

The third of this group was John P. Silliman. He was a Princeton classmate of President Wilson,<sup>216</sup> and after graduating went to Saltillo, where he engaged in farming and dairying. In 1907 he was appointed deputy consul in that city, serving uneventfully until 1914, when, late in April, federal troops made him a prisoner and ransacked his consulate, making off with the official codes. He was finally released after some weeks and went to Mexico City. The Brazilian minister, who had charge of American interests after the breach caused by the Tampico affair, had agreed that Silliman would "stay away from Mexico as long as the present situation would last."<sup>217</sup> He proceeded to Washington, where he reestablished contact with President Wilson, who had not seen him since college days. As a result he was instructed, July 16, 1914, to

<sup>214</sup> For. Rel., 1914, 558, 562, 608, 610, 628.

<sup>215</sup> Register of the Department of State, 1918, 93; For. Rel., 1915, 924.

<sup>216</sup> For. Rel., 1914, 662.

<sup>217</sup> June 8, 1914, For. Rel., 1914, 666-667.

"accompany General Carranza until further orders so that we may keep in touch with him through you." He was to "advise the Department daily of the program for the day following" so that he could always be reached.<sup>218</sup> He joined Carranza in Monterey three days later,<sup>219</sup> and thereafter moved with him until the triumphal entry of the "first chief" into Mexico City in August.<sup>220</sup> The success of constitutionalist arms was followed by a breach between Carranza and Villa. At the suggestion of Carranza, who placed a special train at his disposal, Silliman, acting on his own responsibility, and without instructions, set out for Washington in the hope that his presence there "might be of service at this time to Mexico and the United States."<sup>221</sup> He returned, shortly, to Mexico, and continued to move about with Carranza from point to point until the middle of 1916.<sup>222</sup>

When Silliman left suddenly for Washington in September, 1914, he left John W. Belt in charge of his work. Again, just a year later, Silliman made a

<sup>218</sup> For. Rel., 1914, 564.

<sup>219</sup> For. Rel., 1914, 566.

<sup>220</sup> For. Rel., 1914, 588.

<sup>221</sup> Silliman to Secretary of State, Sept. 23, 1914, For. Rel., 1914, 605.

<sup>222</sup> Despatches from Silliman, For. Rel., 1914, 1915, 1916, sections on Mexico, *passim*. He was appointed consul at Saltillo, Feb. 22, 1915, but "assigned to special duty near Carranza," at the same time, and was thereafter addressed as "special agent." For. Rel., 1915, 654. For testimony concerning him, see Serial 7665, Doc. 285, 812; Serial 7666, Doc. 285, 2427.



trip to Washington and Belt took over his duties. During this latter absence of Silliman the question of the recognition of Carranza was finally settled, and it was Belt who was charged with the presentation, October 19, 1915, of the "historic note" containing official news that recognition had been accorded.<sup>223</sup> The note stated further that "the Government of the United States will accredit . . . a diplomatic representative as soon as the President has had opportunity to designate such representative."<sup>224</sup> On the succeeding day it was announced that Henry P. Fletcher was to be ambassador, and his name was sent to the Senate, December 18, 1915.<sup>225</sup> Before the nomination was confirmed, however, announcement was made that the ambassador would not be accredited until the Mexican executive was in Mexico City.<sup>226</sup> The Villa raid on Columbus occurred in March, 1916, and was followed by American military operations to which Carranza objected. One difficulty followed another, and it was not until February, 1917, that Ambassador Fletcher actually proceeded to Mexico.<sup>227</sup> During that long interim American representation continued to be

<sup>223</sup> For. Rel., 1914, 605; *ibid.*, 1915, 773; other notices of Belt, *ibid.*, 768, 770, 774, 776, 812, 813, 817, 824, 844; *ibid.*, 1916, 481, 483, 487, 488, 490.

<sup>224</sup> *Ibid.*, 1915, 771.

<sup>225</sup> *New York Times*, Oct. 20, Dec. 18, 1915.

<sup>226</sup> *Ibid.*, Jan. 11, 1916.

<sup>227</sup> *Ibid.*, Feb. 26, March 5, 1916, Jan. 3, 31, Feb. 11, 19, 1917; For. Rel., 1917, 1043, 910.

through the medium of executive agents, and the situation in that regard continued as though recognition had not been announced.

Another special agent of similar character to Silliman was James W. Keys, who was directed to make investigations and representations during 1914 and 1915.<sup>228</sup> In addition, Charles B. Parker had charge of the archives of the embassy during a portion of the time the Brazilian minister had charge of American interests. He was always addressed in communications, with no other title than "Mr. Parker, representing American interests in Mexico," though the newspapers often referred to him as *chargé*. He had been clerk in the American embassy since October, 1911.<sup>229</sup> Walter C. Thurston was in charge for a time in 1916 and 1917 during Parker's absence from Mexico City on other business.<sup>230</sup> James Linn Rodgers, consul general at Havana, was also detached for special duty in Mexico during the tense period while the American expeditionary force was in Mexico.<sup>231</sup> In similar manner Customs Collector Zachery L. Cobb, of El Paso, Texas, was made a special agent of the

<sup>228</sup> For. Rel., 1914, 823; Springfield Republican, April 7, 1915.

<sup>229</sup> Register of the Department of State, 1916, 121; For. Rel., 1915, 1916, 1917, sections on Mexico, *passim*; *New York Times*, Aug. 12, 1915, Nov. 20, 1916, Jan. 22, 1917.

<sup>230</sup> Register of the Department of State, 1922, 188; For. Rel., 1916, 645.

<sup>231</sup> Register of the Department of State, 1918, 156; *New York Times*, Feb. 23, March 4, April 10, 16, June 25, 28, 1916; For. Rel., 1916, section on Mexico, *passim*.

Department of State for purposes of contact with the insurgent forces on the American border.<sup>232</sup>

In addition to the agents who had duties of a continuing nature which required them to reside in Mexico for considerable periods, there were several who went on temporary errands of investigation or negotiation and whose services were usually very brief. The first of this group was a journalist, William Bayard Hale, who seemed to have the capacity for being secret in an extraordinarily public manner. Early in August, 1913, he was sent as the bearer of instructions,—and presumably, as an informal assistant and counsellor,—to Mr. Lind. He spent two weeks in Mexico City, his every movement and interview being industriously chronicled by the press. Thence he returned to Washington, bearing the notes exchanged between Mr. Lind and the Mexican secretary of foreign affairs. His comments and interviews roused a storm of embittered criticism in the Mexican press.<sup>233</sup> Two months later, in November, his name again appeared in the newspapers because he had registered in a hotel in Tucson, Arizona, under an assumed name. This circumstance made the American press sceptical of the sincerity of his denials, and those of Secretary of State Bryan, that he had a government mission,—suspicions soon justified by an admission of

<sup>232</sup> For. Rel., 1915, 729, 796; and see *ibid.*, 1914, 1915, 1916, 1917, sections on Mexico, *passim*.

<sup>233</sup> *New York Times*, Aug. 10, 13, 14, 15, 16, 17, 18, 29, Sept. 4, 5, 1913.

the Secretary of State that Hale was engaged upon an official errand.<sup>234</sup> He had some conferences with Carranza, then "First Chief of the Constitutional Forces" and claiming to be at the head of the *de facto* government of Mexico.<sup>235</sup> The conferences had scarcely begun, however, before difficulties developed and the mission failed.<sup>236</sup>

Late in August, 1914, Mr. Paul Fuller, a member of a prominent firm of international lawyers, was sent to Mexico as a "personal representative" of the President, "to confer with Carranza."<sup>237</sup> He was in Mexico City on September 4, and sought vainly to find means to heal the breach between Carranza and Zapata. He did secure the signatures of Villa and Carranza to a joint program for establishing civil government, which, however, was never realized in practice.<sup>238</sup> At the same time an American, the proprietor of a hotel at Cuernavaca, named H. L. Hall, was sent from Washington to interview Zapata. Hall was a personal friend of that particular factional chief, and it was hoped that his influence might help

<sup>234</sup> Ibid., Nov. 6, 15, 1913.

<sup>235</sup> Ibid., Nov. 12, 13, 18, 20, 1913; For. Rel., 1913, 954-955.

<sup>236</sup> *New York Times*, Nov. 19, 20, 26, 28, Dec. 5, 1913, Jan. 29, 1914. For testimony concerning Hale, see Serial 7665, Doc. 285, 814; Serial 7666, Doc. 285, 2283, 2290.

<sup>237</sup> Secretary of State to Silliman, Aug. 28, 1914, For. Rel., 1914, 592.

<sup>238</sup> Ibid., 1914, 594.

bring about the desired meeting between Carranza and Zapata, but this expedient was futile.<sup>239</sup>

Five months later another special representative of the President was despatched to Mexico to interview all the important factional leaders. Duval West, a former United States district attorney in San Antonio, Texas, was to survey the entire situation with a view to advising the President on the further development of American policy. He first saw General Angeles, then Villa at Guadalajara, Carranza at Vera Cruz, and Zapata at Mexico City, seeking from each "complete statements of aims and purposes." He also added his representations with regard to protection of foreign lives and property to those of the resident agents. At the conclusion of his mission he could report only confusion and discord, and express his opinion that without assistance no leader of a group was likely to become able to dominate the situation within a brief period of time.<sup>240</sup> Although it was said then that President Wilson did "not contemplate any change of Mexican policy as a result" of Mr. West's report,<sup>241</sup> it is significant that it was only a few days afterward that the President announced his intention of giving

<sup>239</sup> For. Rel., 1914, 592. For testimony concerning Hall, see Serial 7665, Doc. 285, 308, 814, 1776; Serial 7666, Doc. 285, 2351, 2356, 2437.

<sup>240</sup> *New York Times*, Feb. 2, 11, 12, 24, March 1, 30, April, 6, 8, 21, 25, May 1, 10, 25, 26, 27, 1915; *Who's Who in America*, XI, 3022; For. Rel., 1915, 688. His service was from Feb. 12 to May 25, 1915.

<sup>241</sup> *New York Times*, May 26, 1915.

moral support to some selected man or group,—the policy that resulted, not many months later, in the recognition of Carranza, though he had not triumphed over his rivals.<sup>242</sup>

Besides the two groups of agents just described there was a third,—men appointed to negotiate in international conferences. The failure to dislodge Huerta promptly and the Tampico incident with its resultant hostilities led to an offer of mediation, April 25, 1914, on the part of the Brazilian ambassador and the ministers of Chile and the Argentine.<sup>243</sup> The offer was promptly accepted in the hope that “those who speak for the several elements of the Mexican people” would be willing to discuss terms of satisfactory settlement.<sup>244</sup> General Huerta accepted three days later, but Carranza, accepting in principle, made difficulties which the mediators regarded as tantamount to refusal.<sup>245</sup> The mediators thereupon requested the appointment of representatives of the American government. President Wilson designated Joseph R. Lamar, an associate Justice of the Supreme Court, and Frederick W. Lehmann, formerly Solicitor General, as commissioners, with H. Percival Dodge, an experienced diplomat, as secretary.<sup>246</sup> Under the plan

<sup>242</sup> Above, 492.

<sup>243</sup> For. Rel., 1914, 488-489.

<sup>244</sup> The answer was dated the same day as the offer. *Ibid.*, 489.

<sup>245</sup> *Ibid.*, 494, 514-519.

<sup>246</sup> *Ibid.*, 500-501.

adopted the mediators held separate and informal conferences with the American and then the Huertista commissioners, and brought all together only when points had been agreed upon.<sup>247</sup>

The mediation did not move smoothly, being halted by nettlesome questions of constitutionality and recognition, by Huertista eagerness to gain position, by the desire of the United States virtually to nominate the provisional president of Mexico,<sup>248</sup> and by the difference of opinion between the Department of State and the mediators on the matter of participation by Carranza commissioners.<sup>249</sup> Carranza ultimately appointed commissioners who did not come to the conference but who informally made known to the American commissioners that they "would not accept as a gift anything which the Mediators could give them," even "on a silver platter," and that "under no consideration would Carranza accept the result of mediation, no matter how far it might be in his favor."<sup>250</sup> Inasmuch as the American commissioners had been insisting that no plan had any value unless "accepted by the Constitutionalists,"<sup>251</sup> the attitude of

<sup>247</sup> For. Rel., 1914, 501.

<sup>248</sup> Secretary of State to Lamar, Lehmann, May 29, 1914, For. Rel., 1914, 512.

<sup>249</sup> For. Rel., 1914, 523.

<sup>250</sup> Commissioners to Secretary of State, June 16, 1914, For. Rel., 1914, 538.

<sup>251</sup> Lamar to Rabasa, Huerta representative, June 15, 1914, For. Rel., 1914, 536.



the Carranza commissioners destroyed the foundation upon which they had been building.<sup>252</sup> Nevertheless, the commissioners were instructed to sign the protocols as though they were more than mere paper proposals.<sup>253</sup> The mediators thereupon took a "recess."<sup>254</sup> Huerta was shortly forced from his position, but the proposals of the mediation did not become the basis of a new government.

The Villa raid upon Columbus, March 9, 1916, was followed by the punitive expedition under the command of General Pershing. The stiff-necked Carranza offered every sort of obstacle to its progress and early demanded the withdrawal of American troops.<sup>255</sup> On July 12, the Carranza government proposed a conference between commissioners representing Mexico and the United States for the purpose of "arriving at an early solution of the question relative to the evacuation of the American forces at present in Mexico" and for other purposes connected with border difficulties.<sup>256</sup> The United States suggested that the function of the commission "be broadened . . . to consider such other pending questions the settlement of which would tend to improve the relations of the two countries."<sup>257</sup> The

<sup>252</sup> Commissioners to Secretary of State, June 29, 1914, For. Rel., 1914, 549.

<sup>253</sup> Secretary of State to commissioners, July 1, 1914, For. Rel., 1914, 549-550.

<sup>254</sup> For. Rel., 1914, 554-556.

<sup>255</sup> Ibid., 1916, 480-600, *passim*.

<sup>256</sup> Ibid., 601

<sup>257</sup> Ibid., 603, 604.

Mexican government ultimately consented and appointed commissioners early in August. President Wilson announced, late in August, the appointment of Secretary of the Interior Franklin K. Lane, former Judge George Gray, and Mr. John R. Mott as the American commissioners, with Dr. Leo S. Rowe as secretary, and Special Agent James Linn Rodgers as adviser.<sup>258</sup> The joint commission began its sessions in New York, September 4, 1916, moved to New London, thence to Atlantic City, and elsewhere, finally adjourning January 15, 1917. At one point in its proceedings it seemed about to succeed, the commissioners having agreed upon a protocol for the withdrawal of American troops.<sup>259</sup> Carranza disapproved of the instrument, however, and despite all efforts at compromise the commission failed to reach any agreement. Nevertheless, the American members made two recommendations which appear to have had decisive weight with President Wilson. They suggested that "the Government of the United States, voluntarily and on its own initiative, . . . put the provisions of the Protocol [of November 24] into effect, as far as practicable." They further advised "that full diplomatic relations be reestablished" very promptly. Ambassador Fletcher was sent shortly thereafter.<sup>260</sup>

<sup>258</sup> For. Rel., 1916, 606, 607-608.

<sup>259</sup> Nov. 24, 1916.

<sup>260</sup> Report of the commission, For. Rel., 1917, 916-938; the protocol, *ibid.*, 926-927; the quoted passages, *ibid.*, 936, 938. For Lane's testimony, see Serial 7666, Doc. 285, 2369; for testimony about him, Serial 7665, Doc. 285, 810.

Recognition of Carranza brought him the moral support of the United States, but relations were never upon a cordial foundation, and he never reaped the benefits which might have been derived. Though often strained almost to the breaking point, relations continued until, in May, 1920, he was at last killed by his enemies. No successor was recognized. As time went on and Obregon settled himself firmly in the saddle the situation grew tense. Difficulties centered about three main questions,—the allegedly retro-active character of the Mexican interpretation of article 27 of the constitution of 1917, the proposals to expropriate agrarian holdings without adequate compensation to the owners, and claims for damages. But collateral issues crept in, especially the old question whether the United States was attempting to dictate domestic policy and whether demands were made which derogated from the full sovereignty of Mexico. The two governments conducted a public discussion and committed themselves in so many directions that it was difficult for either one to make concessions without suffering loss of prestige. On the other hand, it was increasingly clear that Obregon should be recognized and that the substantial interests of the two nations were not being served by the legal deadlock.

After confidential exchanges, Secretary of State Hughes issued a formal statement, April 23, 1923: "With the view to hasten the reaching of a mutual understanding between the governments of the United States and Mexico, two American commissioners and

two Mexican commissioners will be appointed to meet for the purpose of exchanging impressions and of reporting them to their respective authorities.”<sup>261</sup> Charles Beecher Warren, former ambassador to Japan, and John Barton Payne, former Secretary of the Interior, were appointed for the purpose and proceeded to Mexico City, arriving May 12, 1923.<sup>262</sup> They entered at once upon their duties, and the conferences continued until August 15, when the success of the commission was assured. Ways were found to meet the substance of American demands under forms which did not derogate from Mexican sovereignty. On September 1, formal announcement was made that the two governments, “in view of the reports and recommendations that their respective commissioners submitted . . . , have resolved to renew diplomatic relations between them, and therefore, pending the appointment of Ambassadors, they are taking the necessary steps to accredit formally their respective *Chargés d’Affaires*.”<sup>263</sup>

Nicaragua has had several periods of political turmoil out of which special agencies have grown. One important case is that of Thomas C. Dawson, who was detached from his post as minister to Panama and sent, in 1910, as special agent to Nicaragua. The

<sup>261</sup> *New York Times*, April 24, 1923.

<sup>262</sup> *Ibid.*, April 25, 1923.

<sup>263</sup> *Ibid.*, Sept. 1, 1923. The work of the commissioners can readily be followed in the *New York Times* through its Index, XI, 42, 43.

American minister had been withdrawn for reasons concisely stated by Secretary of State Knox. "On December 1, 1909, in a note addressed to the Nicaraguan chargé d'affaires, transmitting to him his passports, the Secretary of State declared that the Government of General Zelaya, by its intolerable abuses and excesses, had not only forfeited the esteem and support of its own people, but also by a series of petty annoyances and studied insults to the United States, culminating in the illegal and unwarranted execution of two American citizens, had exhausted the oft-tried patience of this Government so that . . . the President no longer felt for the Government of General Zelaya the respect and confidence which would make it appropriate further to continue diplomatic relations."<sup>264</sup> The diplomatic and other means of pressure employed by the American government resulted in Zelaya's fall, and that of the successor whom he selected. With that event it became essential, if the country was not to be allowed to lapse into anarchy, that the negative policy theretofore followed should be replaced by something positive and constructive. It was out of the question to send a minister, for recognition was the prize held out as a reward for acquiescence in American proposals.

The appropriate occasion for action came when President Estrada cabled his representative in Wash-

<sup>264</sup> Knox to Minister Northcott, Jan. 20, 1911, *For. Rel.*, 1911, 649; for the note, Knox to Rodriguez, here referred to, see *ibid.*, 1909, 455.

ington to seek recognition on the strength of a series of promises designed to meet the anticipated demands of the United States. Coupled with the promises was a request that a commissioner should be sent to investigate and report to the United States government.<sup>265</sup> On October 11, 1910, Thomas C. Dawson, minister to Panama, was designated special agent to Nicaragua and directed to repair to Managua at once in order to "enter into *de facto* relations with the executive power of that Government, showing this instruction as your authority."<sup>266</sup> He arrived in Managua a week later, and at once undertook negotiations on the basis of the fourfold demand for the reestablishment of constitutional government, financial rehabilitation with American aid, the settlement of claims, and the punishment of those responsible for the death of the two American citizens. An agreement was soon reached, and in January, 1911, the government of Estrada was formally recognized and a regular minister put in charge of the American legation.<sup>267</sup>

<sup>265</sup> Estrada to Castrillo, Sept. 10, 1910, For. Rel., 1910, 762; Castrillo to Knox, Sept. 12, 1910, *ibid.* "The department will shortly . . . take the requisite measures for the selection of the commission proposed." Wilson, acting, to Castrillo, Sept. 14, 1910, *ibid.*, 762-763. See also *ibid.*, 1911, 625, 649.

<sup>266</sup> Adee, acting, to Dawson, Oct. 11, 14, 1910, For. Rel., 1910, 763-764.

<sup>267</sup> For. Rel., 1910, 765-767; *ibid.*, 1911, 625-627, 648-654. When the principal points had been agreed upon, Dawson was compelled to go to Panama and left Consul Thomas P. Moffat "charged by me with the matters between your excellency's Government and this agency." Dawson to the minister of foreign affairs, Nov. 5, 1910, *ibid.*, 654. See also *ibid.*, 1910, 767.

Revolutionary activity and American interests have combined to furnish occasion for many special agencies to Haiti.<sup>268</sup> The sensitive situation caused by the existence of the Great War had its effect upon American relations with that country. Secretary of State Lansing, writing in 1922 to the chairman of a committee of the Senate, stated that "a desire to forestall any attempt by a foreign power to obtain a foothold on the territory of an American nation" had been partly responsible for intervention by the United States. The other motive, as explained by the Secretary of State, was "to terminate the appalling conditions of anarchy, savagery, and oppression which had been prevalent in Haiti for decades."<sup>269</sup> In October, 1914, a revolution broke out, the president fled, the executive palace was looted, and general pillage impended. The American minister begged for warships.<sup>270</sup> They were sent immediately, and he was empowered at his discretion to request the commanding naval officer to take charge of the capital and restore the deposed president to power.<sup>271</sup> It was too late to achieve any such result, however, and a new

<sup>268</sup> Haiti had been recognized by the United States in the summer of 1862. Moore, Digest, I, 107.

<sup>269</sup> Serial 7954, 67 Cong. 2 Sess., Sen. Rpt. 794, 37; *New York Times*, May 8, 1922.

<sup>270</sup> Bailly-Blanchard to Bryan, Oct. 29, 1914, For. Rel., 1914, 354-355.

<sup>271</sup> Lansing to Bailly-Blanchard, Oct. 29, 1914, For. Rel., 1914, 355.



government was formed with Theodore as "constitutional" president.<sup>272</sup>

The Department of State withheld recognition of Theodore as "provisional president," despite the desire of the minister, and made it dependent upon the appearance of a Haitian commission in Washington empowered to sign a convention concerning the management of customs upon the Dominican model, the disputes between the Haitian government and the American railroad and bank, the protection of foreign interests, and an engagement "never to lease any Haitian territory . . . to any European Government."<sup>273</sup> Within a week, however, the demands of the United States were increased and recognition was to be withheld until the commissioners actually signed satisfactory protocols. Fear of bad faith prompted the change.<sup>274</sup> Feeling in the Haitian government ran high against American control of customs; the foreign minister was forced out by the very fact that he was conducting negotiations, and the proposal for a Haitian commission to Washington fell through.<sup>275</sup> The new government propped its power with paper money, and again the recognition policy was modified,—“the question of recognition will be considered on its merits,

<sup>272</sup> For. Rel., 1914, 356, 359.

<sup>273</sup> Bryan to Bailly-Blanchard, Nov. 12, 1914, For. Rel., 1914, 359.

<sup>274</sup> Id. to id., Nov. 24, 1914, For. Rel., 1914, 361; Lansing to Bailly-Blanchard, Nov. 28, 1914, *ibid.*, 362.

<sup>275</sup> For. Rel., 1914, 365-366, 367, 368.

and . . . recognition will be granted whenever this Government is satisfied that there is in Haiti a government capable of maintaining order and meeting the country's obligations to outside nations."<sup>276</sup> The Department of State let the question rest for a time, but late in February, 1915, again raised the matter of recognition, sending a list of questions to the American minister, the answers to which were to be utilized in despatching an American commission to Haiti. The questionnaire arrived in the midst of a new revolution, and the minister seemed at a loss to know about which "government" the department was inquiring.<sup>277</sup>

Under the circumstances it was decided to send J. Franklin Fort and Charles Cogswell Smith as commissioners. These two men had served on a commission with Minister Sullivan in the Dominican Republic the year previous, and "encouraged by the work of the Commission in Santo Domingo, the President has decided to make a similar attempt to secure a satisfactory settlement of the difficulties in Haiti." Minister Bailly-Blanchard was associated with the commission.<sup>278</sup> The mission was a failure. Arriving March 5, 1915, an informal interview was held with Haitian

<sup>276</sup> Bryan to Bailly-Blanchard, Dec. 12, 1914, For. Rel., 1914, 367.

<sup>277</sup> Id. to id., Feb. 20, 1915, For. Rel., 1915, 464; Bailly-Blanchard to Bryan, Feb. 22, 24, 27, 1915, *ibid.*, 465-466.

<sup>278</sup> Bryan to Bailly-Blanchard, Feb. 20, 27, 1915, For. Rel., 1915, 464, 466-467.

authorities on March 8, but business was postponed until after the inauguration of President Vilbrun Guillaume Sam on the succeeding day. When, at length, a formal conference was held, the Haitian foreign minister made objections based on the supposed lack of credentials and powers of the commissioners, and nothing remained save for them to return home.<sup>279</sup> The fact was that the proposals were not welcome; the issue raised about credentials was a mere pretext. Dawson had been welcomed in Nicaragua with only instructions to manifest his authority. If the proposals of the commission had not been distasteful, no question would have been raised. In point of fact the personnel of the commission was unfortunate. All political factions in Haiti were opposed to the application of the Dominican plan to their country; the appointment of Fort and Smith advertised that such was the intention. A government which agreed to discuss matters with them would doubtless have been overthrown at once.

Then the Department of State resorted to new tactics. Minister Bailly-Blanchard came to Washington and Paul Fuller, Jr., was sent to Haiti. No question of his credentials could be made, for while he was an executive agent sent to deal with an unrecognized government, he was given the rank of envoy extraor-

<sup>279</sup> Inquiry into the Occupation and Administration of Haiti and the Dominican Republic, Hearings before a Committee of the Senate, 67 Cong. 1 Sess., pt. 1, 6; For. Rel., 1915, 468.

dinary and minister plenipotentiary.<sup>280</sup> The new emissary carried another treaty *projet* which omitted the offensive material regarding customs, and negotiations started. While the matter was still in the stage of proposal and counter-proposal, revolution broke out and the envoy came home.<sup>281</sup> The revolution succeeded; President Sam was butchered, his body dismembered and paraded,—and the intervention of the United States began.<sup>282</sup> The character of the intervention is admirably, if naïvely, reflected in a telegram from Admiral Caperton, August 7, 1915: "Next Thursday, . . . unless otherwise directed, I will permit Congress to elect a President"! <sup>283</sup>

In the days since the Spanish War and the Platt amendment, the United States has had a good deal of experience with interventions in the Caribbean area. Not long after Haiti was virtually coerced into the signature of a treaty,<sup>284</sup> relations with the Dominican Republic fell into a posture which resulted in intervention.<sup>285</sup> President Jimenez resigned May 6, 1916.<sup>286</sup>

<sup>280</sup> Hearings before a Committee of the Senate, pt. 1, 7. Fuller was instructed May 6, 1915.

<sup>281</sup> Ibid. See, also, *New York Times*, April 30, May 4, June 28, 1915.

<sup>282</sup> For. Rel., 1915, 469-476.

<sup>283</sup> Ibid., 431.

<sup>284</sup> Ibid., 431-461, 479-480.

<sup>285</sup> The Dominican Republic had been recognized by the United States in 1866. Moore, *Digest*, I, 107.

<sup>286</sup> For. Rel., 1916, 224-225.

With his consent American marines had already been landed, and after his resignation they advanced to Santo Domingo City and occupied it on May 14.<sup>287</sup> Pacification of the country was undertaken and vigorously pressed, but the American forces did not interfere with Dominican political institutions. On July 25, the Dominican congress elected Dr. Francisco Henríquez y Carvajal provisional president.<sup>288</sup> The United States declined to recognize him unless his government accepted a treaty which he regarded as derogatory to Dominican sovereignty. When he refused, revenue was shut off from his government by American forces.<sup>289</sup> The situation grew more and more tense, until finally, November 29, 1916, the American naval commander issued a proclamation declaring the republic in a state of military occupation.<sup>290</sup> A new administrative structure was set up by the military governor, and the native government disappeared.<sup>291</sup> While an American minister continued in residence he was not accredited to a foreign government.<sup>292</sup>

The difficulty with such a situation is legal and political, not administrative. The United States insti-

<sup>287</sup> For. Rel., 1916, 227.

<sup>288</sup> *Ibid.*, 233.

<sup>289</sup> *Ibid.*, 234-237, 252-255; see also *ibid.*, 1915, 333-339.

<sup>290</sup> *Ibid.*, 1916, 246-247; see also *ibid.*, 240-243.

<sup>291</sup> For a sketch of the situation, see O. Schoenrich, *Santo Domingo, a Country with a Future* (New York, 1918), 89-96.

<sup>292</sup> For. Rel., 1916, 249.

tuted many reforms and improvements. But the political life of a nation was suspended, its political leaders were abroad, or in retirement or confinement. Unless the occupation was to last indefinitely, some way had to be found to reconstitute a native government with some claim to native support. It became increasingly clear that this situation formed no simple problem. In June, 1921, the military governor issued a proclamation announcing the desire of the United States to withdraw,—of course, upon conditions which would protect its accomplishments from destruction. For more than a year no method or formula<sup>293</sup> for withdrawal could be developed. Dominican political leaders came to Washington, and July 11, 1922, the Department of State issued a proposal for the establishment of a provisional, and ultimately a constitutional, government in the Dominican Republic. It proceeded: "In order that this Government may be advised without delay whether the agreement reached in Washington with certain of the Dominican political leaders meets with the approval of a majority of the Dominican people, the President has appointed Mr. Sumner Welles, of New York, . . . Commissioner, with the rank of Envoy Extraordinary and Minister Plenipotentiary, 'to represent him in the Dominican Republic. . . .'"<sup>294</sup> His mission extended until November,—after a provisional president had been

<sup>293</sup> *New York Times*, June 15, 1921.

<sup>294</sup> Official statement of Department of State.

inaugurated in accordance with the plan developed in Washington.<sup>295</sup> Commissioner Welles then attended the conference on Central American affairs as a delegate.<sup>296</sup> But political difficulties in Santo Domingo prevented the election of a congress, and the withdrawal of the United States forces was consequently delayed. Mr. Welles returned to Santo Domingo in April, 1923, to solve that problem,<sup>297</sup> and thereafter he served for a considerable period as high commissioner.<sup>298</sup>

As an interlude to the work of Mr. Welles in the Dominican Republic, there came a mission to Honduras. The rival claims of presidential candidates had brought a deadlock in the political life of that country. There were ten active candidates and their activity was as much military as political. No government existed which the United States was willing to recognize, and marines were landed to protect foreign life and property.<sup>299</sup> Under these circumstances the President directed Mr. Welles to proceed to Honduras, in April, 1924, and use his good offices in finding a solution. He called a conference of Honduran leaders, which was attended, also, by representatives of other Central American governments, and a scheme was

<sup>295</sup> *New York Times*, Oct. 21, 1922; and see the proclamation of the military governor, Admiral Robison, there printed.

<sup>296</sup> *Ibid.*, Nov. 24, 1922.

<sup>297</sup> *Current History*, XVIII, 350.

<sup>298</sup> *Ibid.*, XXIII, 68.

<sup>299</sup> *New York Times*, Feb. 14, March 8, 1924.



quickly worked out that brought peace and a provisional government for the harassed country. This government, headed by General Tosta, was dealt with by the United States "unofficially as the Provisional Government of Honduras."<sup>300</sup> The settlement was later menaced by a new revolt, but ultimately a regular government took office in substantial conformity with its terms. Formal recognition was accorded the new government by the United States.<sup>301</sup>

The complete occupation of Serbia by Austrian and Bulgarian troops during the Great War presented distinct problems of diplomatic representation for the United States. By the end of November, 1915, the Serbian state had virtually ceased to exist. The king escaped to Saloniki and the cabinet established itself in Corfu.<sup>302</sup> American interests in Serbia were involved, and George L. Lorillard, a member of the diplomatic service, was "assigned as Special Agent, with individual rank of Chargé d'Affaires, to assist the Minister at Bucharest in caring for American interests in Serbia," and also to represent Austro-Hungarian interests there.<sup>303</sup> He was later sent, at the

<sup>300</sup> Mr. Welles left Santo Domingo April 9, 1924, met the Honduran representatives April 24, and peace was signed May 5. *Current History*, XX, 488, 665; *New York Times*, April 20, 24, 26, 29, May 2, 6, 18, 1924; for background, see *Current History*, XIX, 964.

<sup>301</sup> *Ibid.*, XXI, 929-930; XXII, 117, 289.

<sup>302</sup> *New International Year Book*, 1916, 626.

<sup>303</sup> Nov. 18, 1915, Register of the Department of State, 1916, 111.

request of the Austrian government, to protect Austrian prisoners of war who were with the Serbian troops.<sup>304</sup> In February, 1916, he was despatched to the exiled Serbian government in Corfu, and remained there until January, 1917, when he was again sent as special agent to care for American interests in Serbia.<sup>305</sup> In June, 1917, H. Percival Dodge was made special agent to the Serbian government, in charge of the American legation, and remained in that capacity until the formal recognition of the Kingdom of the Serbs, Croats, and Slovenes. He was then appointed minister, July 17, 1919.<sup>306</sup>

When the Czar of Russia was overthrown in March, 1917, the revolution was greeted with joy in the United States. President Wilson spoke of "the wonderful and heartening things that have been happening . . . in Russia," and the United States was the first to extend recognition to the new government.<sup>307</sup> The Bolshevik revolution of November, 1917, was not greeted with the same warmth. Relations were continued for some time, but formal recognition was withheld. As late as the famous "fourteen points"

<sup>304</sup> *New York Times*, Jan. 19, 1916.

<sup>305</sup> *Ibid.*, Feb. 21, 1916, Jan. 13, 1917; Register of the Department of State, 1917, 115.

<sup>306</sup> *Who's Who in America*, XI, 784; Register of the Department of State, 1922, 111; *New York Times*, July 11, 1919; statement of Secretary Lansing in Paris, announcing recognition, Feb. 7, 1919.

<sup>307</sup> *For. Rel.*, 1917, 1208, 1211-1212.

speech, January 8, 1918,<sup>308</sup> the United States was still making an effort to deal agreeably with the unwelcome leaders, although withholding recognition. Demands arose among the allied powers for intervention. Twice during March, 1918, the United States government expressed its opposition to that policy,<sup>309</sup> but in July and August, 1918, it yielded to the pressure of events and participated, apparently in the hope of being able to wield an effective influence toward limitation.<sup>310</sup> The results of intervention remind one of the opening of Pandora's box. There followed an amazing series of events. Japanese activity in Siberia went beyond the interallied agreement in character, scope, and amount. In numbers of troops, in the rapidity, nature, and extent of the advance, the intervention took on the character of a hostile invasion. The changes were kaleidoscopic in their rapidity and complexity. In September, 1918, therefore, Ambassador Roland S. Morris was detached from his post in Japan and sent on special mission to Siberia.<sup>311</sup> In company with General Graves, the commander of the forces of intervention, and Admiral Knight, he made the famous

<sup>308</sup> Russian-American Relations, 68-74.

<sup>309</sup> *Ibid.*, 98, 99-100; see also *ibid.*, 82-86.

<sup>310</sup> *Current History*, VIII, pt. 2, 259, 465-467; A. L. P. Dennis, *The Foreign Policies of Soviet Russia* (New York, 1924), 279-280; E. A. Ross, *The Russian Soviet Republic* (New York, 1923), 152-155; *Russian-American Relations*, 237-240; see also *ibid.*, 343-346.

<sup>311</sup> *Who's Who in America*, XI, 2036.

report of October, 1918, advising that the United States take a more active part.<sup>312</sup> President Wilson did not follow the advice. Instead, a protest was sent, on the eve of the armistice, to Japan.

A week after the armistice, Kolchak took possession of the "All Russian Government" by a coup d'état. Before the year was out the peace conference had convened and the problem of Russian policy was again acute. From January to March, 1919, therefore, Mr. Morris was again in Siberia on special mission. On May 26, 1919, it was announced at Paris that the allied and associated powers were "disposed to assist the government of Admiral Kolchak and his associates with munitions" upon certain conditions to which he was requested to give explicit consent.<sup>313</sup> Admiral Kolchak returned a broadly compliant response, and the allied and associated powers thereupon made formal proffer of aid, June 12, 1919.<sup>314</sup> Assistance did not involve recognition, but since the previous December propaganda in favor of recognition of the Kolchak government had been continuous. The United States had watched the unfolding panorama from a point of view somewhat different from that of its European and Asiatic associates, and had been reluctantly and hesitatingly — almost unwillingly — drawn

<sup>312</sup> Dennis, *Foreign Policies of Soviet Russia*, 289.

<sup>313</sup> *Russian-American Relations*, 337-339; *Current History*, X, pt. 2, 90-92; Dennis, *Foreign Policies of Soviet Russia*, 88-89.

<sup>314</sup> *Russian-American Relations*, 340-343.

along. It was determined, therefore, to make an independent investigation of the desirability of granting recognition to Kolchak. To that end Ambassador Morris was associated with General Graves in a special mission to investigate the situation again, and recommend the direction in which policy should run.<sup>315</sup> After a month of investigation the commission recommended recognition of the Kolchak régime and laid out a plan of cooperation.<sup>316</sup> Before any action was taken in support of the recommendations there ensued the series of defeats which destroyed Kolchak's power and cost him his life.

Meanwhile, in Paris, the allied and associated powers were seeking to frame a coherent policy. Public sentiment in the several countries had been so inflamed that statesmen did not have a free hand. There was confusion of counsel. The British delegation desired to have all the Russian factions send representatives to the peace conference in the hope of finding a solution. The French resolutely opposed that proposal and suggested a "cordon sanitaire." President Wilson desired to explore every possibility of peace. He received an appeal, dated December 24, 1918, from Litvinov, who "held a roving diplomatic commission from Moscow," and who announced that he was "authorized to enter into negotiations for a

<sup>315</sup> *Current History*, X, pt. 2, 263; *New York Times*, July 8, 1919.

<sup>316</sup> *New York Times*, July 25, 31, Aug. 9, 13, 23, 24, 26, 28, 29, 31, Sept. 3, Oct. 10, 11, 1919; *Current History*, XI, pt. 1, 120.

peaceful settlement of all questions making for hostilities against Russia.”<sup>317</sup> The President thereupon despatched William H. Buckler, a special agent attached to the embassy of the United States in London,<sup>318</sup> to confer with Litvinov in Stockholm. The result of the conference seemed, to President Wilson, sufficiently important to be laid before the Council of Ten.<sup>319</sup> It was as a consequence of the discussions in the Council of Ten upon these negotiations of Buckler and Litvinov that the President advanced the compromise proposal for a conference of all the Russian factions and representatives of the allies at Prinkipo, in the Sea of Marmora.<sup>320</sup> The invitation was issued late in January, 1919, for a meeting in the middle of February. President Wilson appointed William Allen White and George Davis Herron as the American representatives.<sup>321</sup> The delegates busied themselves in an attempt to secure the assent of the Russian factions to the meeting, but the stubbornness of Sazonov, rep-

<sup>317</sup> Dennis, *Foreign Policies of Soviet Russia*, 76; *Russian-American Relations*, 270-273. Litvinov was previously Soviet ambassador to London.

<sup>318</sup> *Who's Who in America*, XI, 406.

<sup>319</sup> W. C. Bullitt, *The Bullitt Mission to Russia*, Testimony before the Committee on Foreign Relations, United States Senate (New York, 1919), 5-6, 16; *Russian-American Relations*, 290.

<sup>320</sup> *Russian-American Relations*, 290-298. See also *ibid.*, 280-289; Bullitt, *Mission to Russia*, 6-29.

<sup>321</sup> *Current History*, IX, pt. 2, 410; *New York Times*, Feb. 8, 1919.

resenting Kolchak, and the effective strategy of French diplomacy prevented the conference from being held.<sup>322</sup>

In the midst of the confusion of counsel President Wilson returned to the United States for the closing of Congress.<sup>323</sup> The Russian problem still remained unsolved. Consequently, the American delegation despatched William C. Bullitt<sup>324</sup> and Captain W. W. Pettit to Russia. Lincoln Steffens accompanied Mr. Bullitt.<sup>325</sup> The object was to discover possible terms of agreement between the Soviet government and the allies. Great secrecy surrounded the mission, though the British delegation had informal knowledge of it. These men set out February 22, 1919, and returned a month later with an outline of proposals which the Soviet government would accept if promptly offered. But the proposals did not get very much attention and lapsed.<sup>326</sup> The failure of the Prinkipo conference and

<sup>322</sup> Russian-American Relations, 298-306; Bullitt, Mission to Russia, 32-33; Ross, Russian Soviet Republic, 182-183; Dennis, Foreign Policies of Soviet Russia, 69-70, 76-79; Current History, IX, pt. 2, 407-410.

<sup>323</sup> Wilson left Paris Feb. 14, 1919, and returned March 14. *New York Times*, Feb. 15, March 15, 1919.

<sup>324</sup> Bullitt was commissioned Feb. 18, 1919. Bullitt, Mission to Russia, 4.

<sup>325</sup> Bullitt, Mission to Russia, 108.

<sup>326</sup> The Bullitt mission gained a great deal of notoriety because Mr. Bullitt appeared, in September, 1919, before the Senate foreign relations committee and in testimony revealed a good deal of confidential material. Bullitt, Mission to Russia; Serial 7605, 66 Cong. 1 Sess., Sen. Doc. 106, 1161-1292; Nation, CIX, 428-434, 475-482; *New York Times*, March 22, April 3, 4, 6, 8



of the Bullitt mission was followed by the allied decision to support Kolchak, already referred to.

At the same time some of the allies, notably the French and British, determined to assist Denikin, who was (in the alleged phrase of Lloyd George) "occupying a little backyard near the Black Sea,"<sup>327</sup> and winning military successes in the spring of 1919, at the time that Kolchak was losing ground. The United States refrained from assisting Denikin, who was driven from effective power before the end of the year. He was succeeded by General Wrangel. The British who had never had much heart in the South Russian enterprise withdrew, but the tenacious French actually recognized his government. In November, 1920, he took refuge on a French warship, and a flood of refugees was discharged upon Constantinople. Although the United States was standing aside, it had a natural interest, and Rear Admiral Newton A. McCully, the commander of American naval forces in Russian waters, who had performed some duties of a diplomatic nature, was appointed a special agent of the Department of State. Establishing headquarters in Sebastopol, he kept the whole situation in South Russia under review through his subordinates, and re-

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17, May 26, Sept. 13, 14, 15, 16, 17, 19, 23, 1919; *Current History*, XI, pt. 1, 121; *Russian-American Relations*, 317-320; Dennis, *Foreign Policies of Soviet Russia*, 80-84.

<sup>327</sup> *Russian-American Relations*, 286.

ported his observations and opinions until the collapse of the "White" movement.<sup>328</sup>

From the foregoing cases it is evident that executive agents have been frequently sent to new states before recognition was granted, in order to secure information regarding the stability of the country, and informally to protect American interests and press claims of United States citizens. For similar purposes special agents have been despatched to unrecognized governments when the regular representatives had withdrawn. In either case the appointment of an ambassador, minister, or chargé would have involved recognition, which it was deemed proper to withhold for the time being, although informal relations were desirable and sometimes necessary. Occasionally, in recent times, executive agents have been sent to discuss the conditions upon which the United States would accord recognition to a *de facto* government.

<sup>328</sup> Conditions in Russia, Hearings before the Committee on Foreign Affairs, House of Representatives, House Resolution 635, 66 Cong. 3 Sess., 254; *New York Times*, Feb. 14, 18, 23, Aug. 11, Sept. 10, Oct. 14, Nov. 7, 16, 1920; *Who's Who in America*, XIII, 2177.

## CHAPTER VIII

### AGENTS TO COLONIAL AND DEPENDENT STATES

From time to time the United States has been under the necessity of dealing with colonial and dependent governments. Inasmuch as no diplomatic officer is ordinarily maintained at the seat of subordinate governments, and none is ordinarily received, this intercourse has to be carried forward in an informal and unofficial manner. Spain, during the reign of Charles I and his successors of the Austrian dynasty, had often delegated to viceroys power to carry on diplomatic business of some sorts with regularly accredited resident agents who were virtually ministers. But by the time the United States had dealings with Spain this practice had practically ceased, and it was not only impossible to have a resident agent with diplomatic authority, but it was very difficult to establish any sort of diplomatic contact with Spanish viceroys and governors general.<sup>1</sup> There were moments, however, when the United States attempted to establish contact because of the urgency of the matter to be dealt with. On other occasions the Spanish government permitted a limited intercourse on matters, the principle of

<sup>1</sup> See opinion of Atty. Gen. Cushing, Oct. 16, 1855, Opin. Atty. Gen., VII, 551-561.

which had been determined in Spain, only the putting into operation being left to the colonial officers and an American agent. Contacts with viceregal and colonial governments other than those of Spain were at once less frequent, less involved, and less difficult, though occasionally the British government showed some sensitiveness.

The first special agent to a colonial government was sent during Washington's administration. The proximity of Spanish Florida made it possible for runaway slaves to cross the line to freedom with relatively little difficulty. This annoyance was brought to the attention of the Spanish court and orders were issued that no persons held in slavery within the United States should be allowed to introduce themselves as free persons into the province of Florida. Thereupon James Seagrove was instructed to proceed to East Florida, there wait upon Governor Quesada, and make arrangements for the recovery of fugitives. All this occurred before the United States had any treaty with Spain. This commissioner, therefore, was simply an executive agent, and not a commissioner such as is frequently appointed in accordance with the terms of a treaty to carry out its provisions. There was, of course, no other alternative; the work had to be done by a special agent.<sup>2</sup>

<sup>2</sup> Jefferson to Governor Quesada, March 10, 1791, MS. Inst. U. S. Mins., I, 9; Stat. at Large, I, 227; Serial 1720, Doc. 38, 30; Seagrove to Quesada, Aug. 2, 1791, Am. State Papers, For. Rel., I, 248; letters from Seagrove, March 17, 1793, Jan. 13, 1795, MS. Misc. Letters.

The second special agent in this group was sent as a result of Jay's mission to England. Among the important subjects with which Jay had to deal was the matter of the damages to Americans caused by the action of British admiralty courts in the West Indies. As a result of successive orders in council hundreds of American ships had been seized and condemned.<sup>3</sup> The Jay treaty provided for the payment of damages,<sup>4</sup> but it was necessary to gather detailed information. This was perceived before Jay had proceeded far in his negotiation, and steps were taken to get the data necessary for an effective presentation of claims. To that end Nathaniel Higginson was sent to the British West Indies in April, 1794. He was to make a list of all vessels belonging to citizens of the United States which had been condemned there "since Great Britain began to take part in the war against France." He was further to gather the legal records of as many cases as possible and to see that appeals were entered in all cases where there was any prospect that such a procedure would be beneficial.<sup>5</sup>

<sup>3</sup> G. Pellew, *John Jay* (New York, 1890), 263; Bemis, *Jay's Treaty*, 158-159, 200-201, 211-213, 234-235.

<sup>4</sup> Art. VII, Malloy, *Treaties*, I, 596.

<sup>5</sup> Cong. Record, 53 Cong. 2 Sess., XXVI, 3130; Serial 1720, Doc. 38, 31; Higginson to Randolph, April 3, May 23, June 12, 24, July 2, 1794, MS. Special Agent Bundle; Randolph to Jay, July 18, Aug. 11, Sept. 20, Oct. 11, 1794, MS. Inst. U. S. Mins., II, 113, 127-129, 173-179, 187-194; instructions, April 11, 1794, and certificate of appointment, April 16, 1794, MS. Domestic Letters, VI, 174, 186.

Higginson died before completely executing his mission, and the investigation was entrusted to James and William Pérot of Bermuda. Another agent was despatched in 1795 to continue the work.<sup>6</sup>

"The very extraordinary state of neutral commerce, especially that of the United States," which had "been subjected to singular . . . restraints and injuries,"<sup>7</sup> led to another special agency shortly afterwards. There were many American vessels trading to Cuba, and many bound elsewhere were captured by the French and carried thither. All these needed occasional assistance or friendly interposition on their behalf. To that end Joseph M. Yznardi, who had served as consul at Cadiz, was requested, May 2, 1797, to serve in Havana as "a friendly patron and advocate" of Americans needing assistance, looking after their "wants, sufferings, and general interests . . . there and elsewhere in the Island, so far as should be practicable."<sup>8</sup>

<sup>6</sup> Randolph to Messrs. Pérot, Oct. 12, 1794, MS. Inst. U. S. Mins., II, 196-198; letter from Messrs. Pérot, Nov. 1, 1794, MS. Misc. Letters; see also letters of May 8, 1795, MS. Domestic Letters, VIII, and April 14, 1797, MS. Inst. U. S. Mins., IV, 37-38.

<sup>7</sup> Pickering to Bayard, Oct. 16, 1795, MS. Inst. U. S. Mins., III, 72-73.

<sup>8</sup> Pickering to Yznardi, May 2, 1797, MS. Inst. U. S. Mins., IV, 44-45; Pickering to Count of Santa Clara, captain general of Cuba, May 2, 1797, *ibid.*, 45; further instructions, Aug. 21, Oct. 31, 1797, June 2, 1798, July 19, 27, Aug. 15, Sept. 14, 1799, *ibid.*, IV, V. Yznardi's reports are not on file in Department of State.

Napoleon's political adventuring in Spain produced most important repercussions in America. He shook foundations upon which the clumsy edifice of empire already rested insecurely. He tempted his enemies to seize treasures lest they fall into his hands. He impelled neutrals, who could tolerate Spanish impotence, to look to their political interests when they were threatened with the substitution of powerful for feeble neighbors. There is no room for doubt that the United States wished to possess both Cuba and Florida. But neither is there reason to question the sincerity of the willingness to wait until the ripened pears fell from the tree. When Napoleon seized Spain, however, American statesmen could not be forgetful of the Santo Domingo episode of a few years before, and be concerned lest Cuba and Florida become the bases for another attempt to establish Napoleonic sway in the Americas. Nor did the presence of British naval units leave room to doubt that if such an attempt were made Britain would play a new rôle. If either France or England plucked the pears the American policy of watchful waiting would have been in vain. Spanish officials representing a fugitive and impotent regency, faced by the reality that safety depended upon playing off rivals against one another, might well be tempted to engage in intrigue.

This complex of circumstances and policies is reflected in the discussions of Jefferson's cabinet, which "unanimously agreed in the sentiments which should be unauthoritatively expressed by our agents



to influential persons in Cuba and Mexico, to wit 'If you remain under the dominion of the kingdom and family of Spain, we are contented; but we should be extremely unwilling to see you pass under the dominion or ascendancy of France or England. In the latter cases should you choose to declare independence, we cannot now commit ourselves by saying we would make common cause with you but must reserve ourselves to act according to the then existing circumstances, but in our proceedings we shall be influenced by friendship to you, by a firm belief that our interests are intimately connected, and by the strongest repugnance to see you under subordination to either France or England, either politically or commercially.'"<sup>9</sup>

Among the agents selected to express these sentiments were General James C. Wilkinson, commanding officer of the army and governor of northern Louisiana, and William C. C. Claiborne, governor of Louisiana. American troops were gathered in New Orleans, and General Wilkinson, on his way to take command, was to stop at Havana. He set out from Baltimore, January 24, 1809, but was detained some weeks at Charleston by bad weather, so that he did not leave the United States until after Madison assumed office. He had no passport and the captain general of

<sup>9</sup> Oct. 22, 1808, Jefferson, Writings, I, 334-335. See also Jefferson to Claiborne, Oct. 29, 1808, *ibid.*, IX, 212-213: "We consider their interests and ours as the same, and that the object of both must be to exclude all European influence from this hemisphere."

Cuba had stated that he would not be received.<sup>10</sup> However, upon his arrival in Havana, March 23, 1809, Wilkinson was given a formal audience by the captain general. In a note he made the statement that if any power but Spain used Cuba or Florida for military purposes the United States would counteract "the designs of its enemies by such movements and seizures as circumstances should dictate."<sup>11</sup> The captain general avoided a discussion by remarking that the issues raised were so important as to require some one especially appointed for the purpose to discuss them.<sup>12</sup> Wilkinson proceeded to Pensacola,<sup>13</sup> but not finding the Spanish officials there,<sup>14</sup> he went to New Orleans where he carried on fruitless conversations which took on more and more the color of intrigue.<sup>15</sup> Claiborne had instructions almost precisely similar to those of Wilkinson, but he confined his efforts to discussions

<sup>10</sup> I. J. Cox, "The Pan-American Policy of Jefferson and Wilkinson," *Mississippi Valley Hist. Rev.*, I, 222-223. The captain general had stated, also, that he would not receive James Anderson, agent for commerce and seamen, but it was through Anderson that Wilkinson informed the Cuban official of his proposed visit. *Ibid.*, 223. Anderson had been appointed in accordance with an act of Congress for the relief and protection of American seamen, approved May 28, 1796. *Annals of Congress*, 4 Cong. 2 Sess., 2919. See also Jefferson, *Writings*, I, 335.

<sup>11</sup> Cox, "Jefferson and Wilkinson," 224.

<sup>12</sup> *Ibid.*, 225.

<sup>13</sup> H. Adams, *History of the United States during the Administrations of Jefferson and Madison* (New York, 1891-1901), V, 37.

<sup>14</sup> Cox, "Jefferson and Wilkinson," 225.

<sup>15</sup> *Ibid.*, 232-238.

with the Spanish vice consul in New Orleans and the governor of West Florida. He pursued a more straightforward course, although his efforts proved as useless as those of the crafty general.<sup>16</sup>

Florida was largely in the possession of the frayed edges of society, "adventurers, filibusters, and men of piratical inclinations and life, a large portion of whom were fugitives from justice."<sup>17</sup> Spain's tenure was quite uncertain. So there is small wonder that the Madison administration viewed the district with nervous apprehension and sought excuses to incorporate this enemy foothold into the United States. In West Florida the independence movement which culminated in a declaration of independence, September 26, 1810, was accompanied by a "direct appeal" to the President.<sup>18</sup> This appeal argued that France could not object since Napoleon had invited Spanish America to break away from the Bourbon government, and that Great Britain could not object because, unless the United States took West Florida, it would fall "into the hands of the French exiles from the island of Cuba, and other partisans of Bonaparte, who are the eternal enemies of Great Britain."<sup>19</sup>

Shortly after Madison had proclaimed the occupation of West Florida and Claiborne had been

<sup>16</sup> *Ibid.*, 226-228.

<sup>17</sup> F. E. Chadwick, *The Relations of the United States and Spain, Diplomacy* (New York, 1909), 112.

<sup>18</sup> *Am. State Papers, For. Rel.*, III, 396.

<sup>19</sup> *Ibid.*

instructed to take it,<sup>20</sup> the Spanish governor, Folch, wrote to the Secretary of State that he had "decided on delivering this province to the United States under an equitable capitulation." The reason for his decision was that he had been "abandoned," and the duty of the United States seemed clear because, "as the disturbances which now afflict this province, so near to them, must increase every day, they cannot but have an influence on their tranquility, an object which merits the first care of any government." This argument was certain to find a responsive chord in an administration which was looking for excuses to get control of Florida.<sup>21</sup> When, at about the same moment, Governor Folch requested that orders "be given authorizing some person to treat with me for the evacuation of the province, and what ought to precede it," and the British chargé, Morier, took a strong line in protest against American activity in Florida, the decision of the Madison administration could not be doubted.<sup>22</sup> In his secret message of January 3, 1811, Madison gave more attention and rather more weight to Morier's interference than to Folch's offer. He recommended a "declaration that the United States could not see, without serious inquietude, any part of a neighboring territory, in which

<sup>20</sup> Oct. 27, 1810, Am. State Papers, For. Rel., III, 396, 397-398.

<sup>21</sup> Governor Folch to Secretary of State Smith, Dec. 2, 1810, Am. State Papers, For. Rel., III, 398.

<sup>22</sup> Morier to Smith, Dec. 15, 1810, Am. State Papers, For. Rel., III, 399.

they have in different respects so deep and so just a concern, pass from the hands of Spain into those of any other foreign Power." He urged, also, that the executive be authorized to take temporary possession of the territory, "in pursuance of arrangements which may be desired by the Spanish authorities," and to govern the region.<sup>23</sup> Congress passed a secret act promptly, giving the President authority to receive Florida from the governor or to take it if a foreign power should attempt to occupy it.<sup>24</sup>

Such were the circumstances that produced the mission of General George Matthews and Colonel John McKee. Both were experienced men. Matthews had had a special agency under the Secretary of War, in 1810, which had brought him into contact with Folch.<sup>25</sup> McKee, who was the Choctaw agent, had been in correspondence with Folch and served as his messenger to Washington.<sup>26</sup> The purpose of their mission, so far as West Florida was concerned, is adequately indicated in one sentence of their instructions. "Should you find Governor Folk [sic], or the local authority existing there, inclined to surrender, in an amicable manner, . . . the remaining . . . portions of West Florida now held by him in the name

<sup>23</sup> Am. State Papers, For. Rel., III, 394-395.

<sup>24</sup> Jan. 15, 1811.

<sup>25</sup> I. J. Cox, *The West Florida Controversy, 1798-1813, a Study* • in *American Diplomacy* (Baltimore, 1918), 459.

<sup>26</sup> *Ibid.*, 463, 480; Am. State Papers, For. Rel., III, 399.

of the Spanish monarchy, you are to accept, in behalf of the United States, the abdication of his, or of the other existing authority." "The conduct you are to pursue in regard to East Florida, must be regulated by the dictates of your own judgments, on a close view and accurate knowledge of the precise state of things there, and of the real disposition of the Spanish Government." The commissioners were to accept it if peaceably offered and take it if a foreign power seemed likely to attempt its occupation.<sup>27</sup>

After Matthews, "in a mistaken view of his powers," had led the inhabitants of East Florida "to engage in certain revolutionary measures there,"<sup>28</sup> his powers were revoked,<sup>29</sup> and Governor D. B. Mitchell, of Georgia, was commissioned to restore the *status quo ante*,<sup>30</sup> which did not prove as easy as it had been

<sup>27</sup> Monroe [sic], error for Smith, to Matthews and McKee, Jan. 26, 1811, Am. State Papers, For. Rel., III, 571-572; MS. Domestic Letters, XVI, 1-6; further instructions, Jan. 29, June 29, 1811, Jan. 2, April 4, 1812, *ibid.*; communications from Matthews and McKee, April 14, May 11, 1811, MS. Special Agent Bundle; March 21, 1812, May 4, 1813, MS. Misc. Letters; see also Territorial Papers, Florida, in Department of State Library; Adams, History of the United States, V, 316 ff.; VI, 235 ff.; Chadwick, Relations of the United States and Spain, 112-114.

<sup>28</sup> Monroe to Mitchell, Oct. 13, 1812, MS. Domestic Letters, XVI, 72.

<sup>29</sup> Monroe to Matthews, April 4, 1812, Am. State Papers, For. Rel., III, 572; MS. Domestic Letters, XVI, 53-55.

<sup>30</sup> Monroe to Mitchell, April 10, 1812, Am. State Papers, For. Rel., III, 572-573.

to upset the situation. Mitchell found the Spanish governor of East Florida, with whom he was required to deal, anything but agreeable, and as his duties as governor of Georgia needed his attention, his powers were transferred to General Thomas Pinckney.<sup>31</sup> The object was still the same as at first,—to secure East Florida if it could be done peaceably, and forcibly if the British threatened. The fact that it was first to be returned to the Spanish authorities, after having been wrested from them by Matthews, did not alter the fundamental purpose.<sup>32</sup> All three of these missions to the Floridas involved negotiations with colonial officials who were acting, of necessity, without instructions from the home government. It would have been out of the question to employ any other type of agent save commissioners acting under the direction of the executive.

Revolution in Spanish America was precipitated by Napoleonic tampering with Spain. The United States was early in contact with the drift toward independence. At the same time attempts were made to develop contact with the old Spanish officialdom. Nimecio de Salcedo was the general commandant of the internal provinces of New Spain, and was to all intents and purposes self-dependent. To deal with Salcedo, Sec-

<sup>31</sup> *Id.* to *id.*, Oct. 13, 1812, MS. Domestic Letters, XVI, 72; correspondence, Territorial Papers, Florida. There is nothing in the files to indicate that Pinckney was a special agent to Florida.

<sup>32</sup> Monroe to Pinckney, Dec. 8, 1812, MS. Domestic Letters, XVI, 204.



retary of State Monroe selected John H. Robinson, who had previous but unfortunate knowledge of the territory to be traversed.<sup>33</sup> He set out in the summer of 1812 to interview the Spanish commander. One of his duties was to make an arrangement for breaking up the lawless bands in the territory in dispute between the United States and Spain. Another was to explain and make palatable the seizure of West Florida,—a very considerable order. The United States was at this moment particularly anxious that the Spanish officials, representatives of the regency which was dependent upon Great Britain for support, should not aid the British in the War of 1812. In addition to these reasons for the mission, there was a desire "to establish a friendly commercial intercourse." Regular diplomatic channels were closed by the fact that the United States did not recognize either the Napoleonic government or the regency; hence the resort to a special agency accredited to a colonial official. Salcedo, who had personal reasons for disliking Robinson and who was bitterly suspicious of the United States, declined to deal with an unofficial representative and urged him to return to the United States. Robinson complied, justifying by his conduct then and subsequently the Spaniards' suspicion that he was more interested in fomenting revolution than in reaching a real accommodation,<sup>34</sup> and Monroe had reason to regret the employment of such an agent.

<sup>33</sup> Cox, "Monroe and Mexican Agents," 208.

<sup>34</sup> *Ibid.*, 208-214; also Cox, *West Florida Controversy*, 564-

The next special agency to a viceregal government also grew out of the difficulties of Spain. As American shipping had suffered under the illegal blockades of the Napoleonic wars, it was now to suffer under the illegal blockades established by Spain and her revolting colonies in South America. September 5, 1815, De Onís, the Spanish minister to the United States, notified Secretary of State Monroe that "Lieutenant General Don Pablo Morillo, captain general of Caracas, and commander of the expedition which His Majesty has destined to reestablish tranquility at Carthagena," was about "to establish the most rigorous blockade of the ports of the viceroyalty of Santa Fé, including Carthagena, and that, in consequence, every neutral vessel which should be found, not only in those ports, but on those coasts, shall be made prize of, in order to prevent those who have revolted from His Majesty's authority receiving succors of any kind."<sup>35</sup> Nothing active seems to have been done by the United States until after another notice, March 2, 1816, which conveyed the information that Morillo, having reduced Carthagena, "had found it expedient, for the complete re-establishment of the tranquility of the viceroyalty, to continue the blockade

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565, 630-632. Reports on Robinson's activities were sent to Department of State by William Shaler who was stationed at Natchitoches. Shaler to Monroe, Oct. 5, 24, Nov. 10, 1812, Feb. 21, March 13, April 2, 18, May 2, 1813, MS. Special Agent Bundle.

<sup>35</sup> Am. State Papers, For. Rel., IV, 156.

from Santa Marta to the river Atrato, inclusive; and to give orders that if any vessel be met with further south than the mouths of the Magdalena, or further north than the parallel of Cape Tiburon, on the Mosquito shore, and between the meridians of those points, she would be declared good prize, whatever documents or destination she might have; but that he had left open to the commerce of neutrals the two ports of Santa Marta and Porto Bello.”<sup>36</sup>

Already, on February 21, Monroe had taken up with De Onis the effects of the previous blockade. The new notification precipitated a flat declaration “that this proclamation of General Morillo is evidently repugnant to the law of nations.”<sup>37</sup> While De Onis did not yield much ground on the legality of the blockade, he was ready to cooperate to some extent in repairing part of the damage. The agent selected to go to Carthagena was Christopher Hughes, a native of Baltimore, who had been secretary to the legation in London and had brought the treaty of Ghent to the United States in 1815. He was put in direct touch with De Onis, and discussed the matter with the governor of Maryland, because most of the Americans imprisoned by Morillo on account of violations of the blockade were from Baltimore, “and several of them men of property, character, and consideration.” As news of the proposed mission spread, Hughes was

<sup>36</sup> Am. State Papers, For. Rel., IV, 156.

<sup>37</sup> Ibid.

"loaded with letters, and messages and money, for the prisoners from their friends." <sup>38</sup>

De Onis had indicated that there would be no great difficulty in securing the release of any of the American citizens who had not actually participated in the struggle on the side of the revolutionists. Monroe, however, was anxious to have Hughes attempt to gain freedom even for those who were implicated in the attempted revolution. This he held to be proper because the movement was not an insurrection or rebellion. He assimilated the movement in character to the American Revolution and wanted the practices to be similar. "In the war of our Revolution, foreigners in our service were not only exchanged, but treated with marked attention by the British authorities." De Onis did not appear to be at all interested in the release of captured American property, but Hughes was instructed to press this point also, since the blockade being illegal, the capture was also illegal. The agent was despatched on board the *Macedonian*, a circumstance which was calculated to add persuasiveness to his representations.<sup>39</sup> Hughes succeeded in obtaining the release of the Americans who were still imprisoned for violation of the blockade, but could not secure compensation for the property seized.<sup>40</sup>

<sup>38</sup> Hughes to Monroe, March 14, 1816, MS. Special Agent Bundle.

<sup>39</sup> Monroe to Hughes, March 25, 1816, MS. Inst. U. S. Mins., VIII, 40-42.

<sup>40</sup> Hughes to Monroe, July 6, 1816, MS. Special Agent Bundle; appointment, March 14, 1816, MS. Desp. to Consuls, I; addi-

Divergent interpretations of the first article of the treaty of Ghent, at the close of the War of 1812, were the cause for two missions to British colonial dependencies. This article provided that "all territory, places and possessions whatsoever, taken by either party from the other during the war . . . , shall be restored without delay, and without . . . carrying away . . . any slaves or other private property."<sup>41</sup> Notwithstanding this provision, the British forces, as they evacuated posts in the South, took slaves with them. They also carried away the slaves which had been on board British ships in American waters. General Thomas Pinckney, in command of the southern army, reported the facts, March 24, 1815, to Secretary of State Monroe, who thereupon engaged in a correspondence with the British chargé, Anthony St. John Baker.<sup>42</sup> The results were not very satisfactory. Monroe was convinced that the motive for carrying away slaves was not philanthropy but cupidity, that the slaves were sold in the West Indies. "The war carried on against us, in regard to our slaves, has been unjustifiable. If cupidity has been one of the motives to it, it ought to be shown. The exposure will produce a good effect in any future war; for if it is made

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tional instructions, April 3, 1816, MS. Inst. U. S. Mins., VIII; despatches from Hughes, March 14, 15, April 9, 1816, MS. Special Agent Bundle.

<sup>41</sup> Malloy, *Treaties*, I, 613.

<sup>42</sup> Monroe to Pinckney, April 1, 1815, MS. Inst. Sp. Miss., III, 285; Am. State Papers, *For. Rel.*, IV, 106-108.

to appear that the slaves have been sold in the West Indies, and their condition, under new masters, separated from their connections and friends, become worse than it was before, it will be more difficult to impose on them in any future war." Pinckney was, therefore, authorized to investigate the facts "through discreet agents" and to send one to the West Indies.<sup>43</sup> The next day Monroe suggested that the authority of the proposed agent be enlarged. In addition to procuring "evidence of the sale of our slaves" he might "find out all those who are willing to return to their former owners in the United States," starting in Bermuda and proceeding to the other islands. For such a program more than one agent might be necessary;<sup>44</sup> as a matter of fact three were sent.

Thomas Spalding, of Georgia, who had been one of the men instructed to receive property and slaves from the British at Cumberland Island in March, 1815,<sup>45</sup> was commissioned by General Pinckney to proceed to Bermuda and to present to the colonial authorities the demand for "the restoration of the slaves who had been carried there contrary to a positive stipulation of the treaty."<sup>46</sup> Spalding arrived in Bermuda May 19, 1815. "He addressed himself to the proper persons,

<sup>43</sup> Monroe to Pinckney, April 6, 1815, MS. Inst. Sp. Miss., III, 286-290.

<sup>44</sup> Id. to id., April 7, 1815, MS. Inst. Sp. Miss., III, 290-293.

<sup>45</sup> Am. State Papers, For. Rel., IV, 109-113.

<sup>46</sup> Monroe to Pinckney, July 17, 1815, MS. Inst. Sp. Miss., III, 294-297.

exhibited to them the power under which he acted, and sustained his demand in a forcible manner.”<sup>47</sup> The colonial authorities refused to discuss the matter and referred Spalding to the regular diplomatic channels. Governor Cockburn refused to recognize his authority on the ground that his letter did not come from the Secretary of State.<sup>48</sup> Monroe thought this a mere excuse for avoiding the issue, since a power from Pinckney “to treat with the governor of the Island, or admiral of a fleet, was adequate. Indeed none other ought then to have been given.”<sup>49</sup> In July it was suggested to Pinckney that he again send Spalding or another agent to the West Indies, and he was empowered by the Department of State for that purpose, his “military functions, in consequence of the peace,” having ceased.<sup>50</sup> However, it was decided that it would be useless to send an agent then.<sup>51</sup>

Eli Magruder, of Washington, who was “well acquainted with the West Indies, and a discreet man,” left for Bermuda in the spring of 1815. He was to work confidentially with Spalding, recovering slaves and collecting evidence, after the latter’s request to the colonial authorities. Magruder’s agency was designed

<sup>47</sup> Monroe to Pinckney, July 17, 1815, *loc. cit.*

<sup>48</sup> Spalding to Monroe, May, 1815, *Am. State Papers, For. Rel.*, IV, 113.

<sup>49</sup> Monroe to Pinckney, July 17, 1815, *loc. cit.*

<sup>50</sup> *Id.* to *id.*, July 17, 1815, *MS. Inst. Sp. Miss.*, III, 297-299; Monroe to Spalding, July 18, 1815, *ibid.*, 299-302.

<sup>51</sup> Pleasanton, acting, to Pinckney, Aug. 22, 1815, *MS. Domestic Letters*, XVI, 188-189.



to be of a private character, his inquiries being confined to merchants and others.<sup>52</sup> Augustus Neale, of Virginia, was instructed shortly after the departure of Magruder to make investigations in Halifax where, it was reported, most of the slaves had been sent. From there he might go to any of the British colonies, cooperating with Spalding and Magruder. This mission, like the others, proved futile, and Neale returned to Norfolk in September.<sup>53</sup>

The second mission to a British dependency proved to be largely formal in character, for the negotiation had been practically completed by the principals, though this fact was not clear when the agents set out. Americans had been making a place for themselves in Oregon, and the establishment of a fort at the mouth of the Columbia, in 1811, apparently clinched their hold. With the outbreak of the War of 1812 the aspect of things changed. The American holdings were sold to the British Northwest Company in October, 1813. In December a British sloop of war, the *Raccoon*, which had been sent from Rio de Janeiro

<sup>52</sup> Monroe to Dr. Jones, April 14, 1815, MS. Inst. Sp. Miss., III, 293-294; Monroe to Pinckney, July 17, 1815, *ibid.*, 294-297.

<sup>53</sup> Monroe to Pinckney, July 17, 1815, *loc. cit.*; Monroe to Neale, Oct. 11, 1815, MS. Domestic Letters, XVI, 261. Reference to these agents, Monroe to J. Q. Adams, minister in London, Nov. 16, 1815, MS. Inst. U. S. Mins., VIII, 5-6; material relating to the slaves taken by the British forces, to Adams, *ibid.*, VII, VIII; from Adams, MS. Desp. Gr. Britain, XIX; to Chargé Baker, MS. Notes to Foreign Legations, II; from Chargé Baker, MS. Notes from British Legation, VIII; Am. State Papers, For. Rel., IV, 106-126.

for the purpose of taking the post, went through the formality of taking possession in the name of the British sovereign, and the post was renamed Fort George.<sup>54</sup> The circumstances were such that it was possible for the question to arise whether Astoria was sold or was captured. The only exception to the provision of the first article of the treaty of Ghent, that all possessions taken by either party from the other during the war should be restored, was islands in Passamaquoddy Bay.<sup>55</sup> The United States knew of the voyage of the *Raccoon*, and in July, 1815, Monroe wrote the British chargé, Baker, claiming the restitution of the post on the Columbia on the ground that it "was taken during the war."<sup>56</sup> Baker professed not to be in possession of the facts, intimated rather broadly that the American government was not, and suggested that Monroe take up the matter with the British vice admiral on the Brazil station, who would know the facts.<sup>57</sup>

These matters rested until Monroe became President, when it was promptly decided to despatch the *Ontario* with commissioners to recover possession. Bagot, the British minister, attempted to intervene and

<sup>54</sup> G. C. Davidson, *The Northwest Company* (Berkeley, 1918), 137-139; E. S. Meany, "The Towns of the Pacific Northwest Were not Founded on the Fur Trade," *Ann. Rpt. Am. Hist. Ass.*, 1909, 166; "Papers of James A. Bayard," 486, n. 3.

<sup>55</sup> Malloy, *Treaties*, I, 612.

<sup>56</sup> *Am. State Papers, For. Rel.*, IV, 852.

<sup>57</sup> Baker to Monroe, July 23, 1815, *Am. State Papers, For. Rel.*, IV, 852.

wipe out the American claim on the ground that "the post in question had not been captured during the late war, but that the Americans had retired from it, under an agreement made with the Northwest Company, who had purchased their effects, and who had ever since retained peaceable possession of the coast."<sup>58</sup> The fact was patent, however, that whereas the Americans had possession before the war, the British had possession since. On that basis the American government would not admit of any question being made, and Castlereagh, while insisting on raising the question of title, "admitted, in the most ample extent, our right to be reinstated, and to be the party in possession while treating of the title." Consequently, Lord Bathurst, the colonial secretary, despatched orders for the surrender of the post.<sup>59</sup>

Before these orders were known, however, the *Ontario* had set sail, James B. Prevost and the commander of the vessel, James Biddle, being associated in a commission to receive possession of the Columbia country, or "to assert there the claim of sovereignty in the name and on behalf of the United States, by some symbolical or other appropriate mode of setting up a claim to national authority or dominion." But in any event no force was to be employed, whatever

<sup>58</sup> Bagot to Adams, Nov. 26, 1817, Am. State Papers, For. Rel., IV, 852.

<sup>59</sup> Rush to Adams, Feb. 14, 1818, Am. State Papers, For. Rel., IV, 853; see *ibid.*, 856.

unexpected obstruction might occur.<sup>60</sup> Due to misunderstandings between the agents, Captain Biddle sailed for the Northwest from Valparaiso without Prevost, June 14, 1818.<sup>61</sup> However, July 7, "Captain Hickey of the British Navy commanding the *Blossom* . . . submitted [to Prevost] . . . certain orders from his Government . . . instructing him to proceed forthwith to the Columbia River for the purpose of surrendering that place in conformity to the first article of the Treaty of Ghent, to any one authorized on the part of the United States to receive such possessions."<sup>62</sup> On Prevost's suggestion, he accompanied the British officer to the Columbia River, where Fort George was formally restored, October 6, 1818.<sup>63</sup>

Another agency of an extremely informal character also involved Prevost. It was intended that in addition to his mission to the Columbia, he should have charge of American interests in a considerable portion of South America. In the pursuit of this duty Prevost became interested in the cases of two American ships,

<sup>60</sup> Adams to Prevost, Adams to Biddle, Sept. 29, 1817, MS. Desp. to Consuls, II, 16-17, 60; MS. Inst. U. S. Mins., VIII, 148-149, 149.

<sup>61</sup> Prevost to Adams, June 20, 1818, MS. Special Agent Bundle; Biddle's letters relative to the Columbia River mission, Aug. 19, 1818, March 10, May 23, Dec. 7, 1819, MS. Misc. Letters.

<sup>62</sup> Prevost to Adams, July 8, 1818, MS. Special Agent Bundle.

<sup>63</sup> Id. to id., Jan. 15, 1819, enclosing report prepared Nov. 11, 1818, MS. Special Agent Bundle; Annals of Congress, 17 Cong. 1 Sess., II, 2136-2140; Am. State Papers, For. Rel., IV, 854-856.

the *Beaver* and *Canton*. He presented his demands in April, 1818, but there was need to carry another appeal to the Spanish viceroy in Peru.<sup>64</sup> For this purpose Prevost employed Jeremy Robinson. Robinson had been appointed, almost immediately after Monroe took office, as agent to Lima,<sup>65</sup> but had not proceeded promptly to his post, and Adams withdrew the appointment.<sup>66</sup> Robinson had, however, gone to Peru and Chile on his own account and met Prevost in Santiago. It was at this time that Prevost engaged Robinson to go as his deputy to Lima<sup>67</sup> and there deal with the Spanish viceroy.<sup>68</sup> Robinson finally secured the restoration of the two vessels, but no damages or indemnification for the cargoes.<sup>69</sup> This mission, like the whole exploit of Robinson in South America, is on the very borderland of such complete informality as to exclude it from the discussion.<sup>70</sup>

For over ten years after the ratification of the treaty of February 22, 1819, between the United States and Spain there was a steady stream of special agents to

<sup>64</sup> Id. to id., June 10, 1818, MS. Special Agent Bundle.

<sup>65</sup> Rush to Robinson, March 24, 1817, MS. Desp. to Consuls, II, 45.

<sup>66</sup> Adams to Robinson, Nov. 13, 1817, MS. Desp. to Consuls, II, 68.

<sup>67</sup> Robinson to Adams, June 8, 1818, MS. Special Agent Bundle; Prevost to Adams, June 20, 1818, *ibid*.

<sup>68</sup> Robinson to Adams, Aug. 9, 12, 1818, MS. Special Agent Bundle.

<sup>69</sup> Id. to id., Dec. 6, 1818, MS. Special Agent Bundle.

<sup>70</sup> Above, 419-420.

Cuba. The basis for their work is to be found in the second article of the treaty, which provided for the cession of Florida and went on to say that the Florida "archives and documents shall be left in the possession of the commissaries or officers of the United States, duly authorized to receive them."<sup>71</sup> The matter seemed clear and simple enough, especially as the United States had a royal order directing their delivery. Consequently, March 10, 1821, Secretary of State Adams directed Colonel James G. Forbes to proceed to Cuba with the royal order and deliver it to the captain general. He was to "urge the immediate execution of it and . . . offer to take charge . . . of the Governor General's order to the Governor of West Florida, . . . and concert with him the means of transmitting the order for the delivery of the province of East Florida to the Governor at St. Augustine."<sup>72</sup> In order to guard against accident, Gilbert L. Thompson was commissioned to perform the duties assigned to Forbes in case of need. Forbes, however, arrived safely at Havana, in the *Hornet*, April 22, and Thompson served as a sort of assistant.<sup>73</sup> There ensued an

<sup>71</sup> Malloy, *Treaties*, II, 1652.

<sup>72</sup> *Annals of Congress*, 17 Cong. 1 Sess., II, 1897-1898; for correspondence, see MS. Inst. U. S. Mins., IX, 89-94, 183 ff.; MS. Domestic Letters, XVIII, 267, 287; XIX, index; MS. Consular Desp. Havana, III; Territorial Papers, Florida, C. H. Van Tyne and W. G. Leland, *Guide to the Archives of the Government of the United States in Washington* (2d ed., Washington, 1907), 38.

<sup>73</sup> *Annals of Congress*, 17 Cong. 1 Sess., II, 1898, 1906; appointment, March 15, 1821, MS. Domestic Letters, XVIII; no

extraordinary series of procrastinations. Forbes was put off from day to day, and finally, May 30, he was sent home empty handed but with fairest promises.

After the lapse of several months the matter was again taken up with Madrid through the American minister, John Forsyth, and the Spanish government was requested to issue "a second peremptory order to the Governor of Cuba, for the delivery of the archives and documents."<sup>74</sup> This the Spanish government declined to do on the characteristic ground that its functionaries needed no prodding to make them perform their duties. In March, 1822, therefore, Captain James Biddle, of the *Macedonian*, was given a commission to perform the functions assigned a year before to Forbes.<sup>75</sup> When Captain General Mahy "eluded" the demands of Biddle, recourse was again had to discussions in Madrid.<sup>76</sup> The situation was the more irritating because the commissioners of land claims in Florida were able to produce copies of some of the documents authenticated by the captain general who professed he could not find them in the archives. The Spanish government at last waived punctilio, and in October, 1822, issued "a new and peremptory order"

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reports from Thompson in MS. Consular Desp. Havana or MS. Misc. Letters.

<sup>74</sup> Adams to Randall, April 28, 1823, MS. Desp. to Consuls, II, 281-283.

<sup>75</sup> Adams to Forsyth, May 30, 1822, MS. Inst. U. S. Mins., IX, 123-124; instructions, March 23, 1822, MS. Domestic Letters, XIX, 295; report, May 15, 1822, MS. Misc. Letters.

<sup>76</sup> Id. to id., May 30, 1822, loc. cit.



to the governor to deliver the documents to Biddle. But there was a characteristic drawback,—the request that if Biddle had left Havana the United States should not appoint another agent to go to Cuba until notified by the Spanish minister in Washington that the governor was ready to deliver the archives.<sup>77</sup>

This was rather too thin. The Monroe administration did not feel bound to accede to a request which was so palpably a device to facilitate further procrastination. On December 13, 1822, William McRee, of Virginia, was appointed to go to Cuba for the archives, but he declined.<sup>78</sup> In April, 1823, a new appointment was made, and Thomas Randall was despatched to Cuba to act as agent for commerce and seamen and to receive the Florida archives and documents.<sup>79</sup> Somewhat greater hopes were entertained of his success inasmuch as Governor Mahy had died and the new captain general, Vives, was expected to be more amiably disposed.<sup>80</sup> Randall approached his task too optimistically, for it was not until eighteen months after his appointment that Vives got around to tell him that nothing could be found.<sup>81</sup>

<sup>77</sup> Adams to Randall, April 28, 1823, loc. cit.

<sup>78</sup> Adams to McRee, Dec. 13, 1822, MS. Domestic Letters, XX, 148; McRee to Adams, Dec. 24, 1822, MS. Misc. Letters; MS. Inst. U. S. Mins., IX, 157, 159; Cong. Record, 53 Cong. 2 Sess., XXVI, 3131; see, for error as to destination, *ibid.*, 199.

<sup>79</sup> Randall did not reach Cuba until the spring of 1824. Randall to Clay, March 21, 1825, MS. Special Agent Bundle.

<sup>80</sup> Adams to Randall, April 28, 1823, loc. cit.

<sup>81</sup> Randall to Adams, Oct. 31, 1824, MS. Special Agent Bundle;

The fact that the desired documents were officially nonexistent was not sufficient to prevent them, or copies of them, from continuing to appear in the courts in suits over Florida land claims. It was not an overstatement when Van Buren, as Secretary of State, declared that the "incomplete fulfilment" of the second clause of the treaty of 1819 "presents almost insuperable obstacles" to the "final settlement on principles of justice" of the land claims in Florida.<sup>82</sup> When suspicions were aroused concerning certain claims, Richard K. Call, of Florida, was sent to Havana, in 1829, to examine the archives for evidence of the fraudulent character of the claims. In sending Call to study the archives it was recognized that the

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instructions, MS. Desp. to Consuls, II, 278-292, 327; despatches from Randall, May 9, June 21, July 1, 5, 14, Aug. 2, Sept. 6, 15, Oct. 31, 1824, March 21, 1825, MS. Special Agent Bundle; May 14, 1824, MS. Misc. Letters. Like Biddle and McRee, Randall was instructed to make representations to the Cuban and Porto Rican authorities concerning the suppression of piracy. Adams to Nelson, minister to Spain, April 28, 1823, MS. Inst. U. S. Mins., IX, 183; Adams to McRee, Dec. 13, 1822, loc. cit.; Randall correspondence, loc. cit. When Poinsett went to Mexico he stopped in Porto Rico, Sept. 28, 1822, to remonstrate against allowing privateers to fit out there. On his return from Mexico, Jan., 1823, he was detained in Havana by weather conditions and prepared a report for the President, in which he concluded "that Cuba is important to the maritime security of the South and that care should be taken that no foreign power nor negro republic establish itself there." Van Tyne and Leland, *Guide to Archives of the United States*, 50; Poinsett, *Notes on Mexico*, 5-11, 279-295; Moore, *Digest*, I, 582.

<sup>82</sup> Van Buren to Van Ness, minister to Spain, May 25, 1830, MS. Inst. U. S. Mins., XIII, 112-113.

documents he was to examine should have been turned over to the United States under the treaty. He was warned, consequently, "to let it be well understood, that the friendly application which is now addressed to General Vives is not to be considered as a waiver of any right whatever which the United States derive . . . under the treaty."<sup>83</sup>

The success of Call in discovering what Spanish officials had professed themselves quite unable to find led to new efforts to gain possession of the archives.<sup>84</sup> When a fresh order from the King of Spain for their delivery was secured, it seemed as though the matter was as good as closed. Their existence had been ascertained; the order was specific in directing delivery. It was necessary only to send a messenger to bring them home, though in view of past experience there was probably more diplomacy than candor in the expression of full confidence "that from your Excellency's known character, and desire to execute with fidelity and honor all the engagements of your nation, no impediment or delay will be interposed to this execution of the order of His Catholic Majesty."<sup>85</sup>

<sup>83</sup> Hamilton, acting, to Call, March 30, 1829, MS. Inst. U. S. Mins., XII, 214-216; further instructions, April 15, 24, 1829, MS. Domestic Letters, XXIII, 21, 26; also MS. Desp. to Consuls, III, 46, 55, 56; see despatch to T. M. Rodney, April 4, 1829, *ibid.*; no communications from Call while in Cuba, but see his letters, March 27, July 26, 1829, MS. Misc. Letters.

<sup>84</sup> Van Buren to Van Ness, May 25, 1830, *loc. cit.*

<sup>85</sup> Livingston, Secretary of State, to Vives, May 7, 1832, MS. Desp. to Consuls, II, 409.

The messenger selected was Jeremy Robinson, who had been so long active in South America. He was directed to go to Tallahassee and see General Call in order to get as much information as possible; he was also to go to Pensacola and there gather data that would assist materially in locating the desired documents. But Robinson was to be merely a messenger, the consul at Havana, William Shaler, being commissioned to receive the documents.<sup>86</sup> The event, however, was quite different from the anticipation. Robinson went to Cuba in May, 1832, and remained there, devoting his energies continuously to the discovery of the archives, until his death late in 1834.<sup>87</sup> In the course of time Robinson's status was changed from that of messenger to special agent or commissioner, and because the vice consul, Richard J. Cleveland, was not active, Robinson had practically sole charge of the work.<sup>88</sup> After his death the completion

<sup>86</sup> Livingston to Robinson, May 7, 1832, MS. Inst. Sp. Miss., I, 90; MS. Inst. U. S. Mins., XIII, 290. Shaler was not in Cuba when Robinson arrived and did not return until Nov. 24, 1832. He died the following March. Correspondence, May 7, 9, 1832, MS. Desp. to Consuls, III; Sept. 1, 5, Oct. 7, 1832, March 30, 1833, MS. Inst. Sp. Miss., I; June 20, 23, Oct. 1, 24, 1832, MS. Consular Letters, Havana, V.

<sup>87</sup> Despatches from Robinson, 30 letters from May 14 to Dec. 29, 1833, MS. Special Agent Bundle; further instructions, Sept. 17, 1832, Oct. 3, 1833, MS. Inst. Sp. Miss., I; Robinson's journal, "Transfer of Florida Archives, May, 1832,—Nov., 1834," Van Tyne and Leland, *Guide to Archives of the United States*, 52; notice of Robinson's death, Nov. 12, 1834, MS. Consular Letters, Havana, VI.

<sup>88</sup> Livingston to Cleveland and Robinson, May 2, 1833, MS.

of the task was left to Nicholas P. Trist, who had become consul, and to Edward Wyer, who was to bring back the documents.<sup>89</sup>

A mission of quite different character was entrusted to William B. Hodgson. He was one of the men whom John Quincy Adams had sought to train under his plan of attaching to each of the Barbary consulates for three years a young man who could "learn the Turkish and Arabic languages and the lingua Franca, with a view to have persons among our public officers versed in those languages."<sup>90</sup> Hodgson did learn those languages<sup>91</sup> and was sent to bear despatches to Commodore Porter when the peppery naval officer was made chargé to Constantinople, and he was also given authority to negotiate the ratification of America's first treaty with Turkey if Porter declined or was unable to fulfill the commission.<sup>92</sup> After Porter quarrelled with Navoni, who had been connected with American

Inst. Sp. Miss., I, 96-97; despatches from Cleveland, Sept. 26, Dec. 14, 1833, MS. Consular Letters, Havana, VI. Cleveland was in charge of the consulate during the absence of Shaler and after his death until the arrival of Trist, who was appointed April 24, 1833.

<sup>89</sup> Secretary of State Forsyth to Wyer and Trist, Jan. 11, 1835, MS. Inst. Sp. Miss., I, 123-125; correspondence, Feb. 10, Oct. 27, Nov. 7, 1834, Jan. 11, 1835, *ibid.*; Oct. 28, Dec. 13, 27, 1834, June 14, Dec. 8, 1835, MS. Consular Letters, Havana, VI. Trist had been appointed commissioner, jointly with Robinson, to receive the Florida archives, Feb. 10, 1834.

<sup>90</sup> J. Q. Adams, *Memoirs*, VII, 106-107.

<sup>91</sup> *Ibid.*, VIII, 170, 283.

<sup>92</sup> MS. Inst. Turkey, I; MS. Desp. Turkey, II.

interests since Bradish went out in 1820, Hodgson was made dragoman. However, Porter's opinion of Hodgson, which had been very favorable, cooled rapidly until relations became strained. Under these circumstances it was desirable that Hodgson should leave Constantinople, but since the differences did not involve charges, there was no reason to recall him. He was, therefore, detached from the legation and sent to Egypt.

Having available a trained man,—a situation sufficiently unusual in the American diplomacy of the day to occasion remark,—there was a field which needed his attention. The star of Mehemet Ali, Pasha of Egypt, had been rising for a decade or more. In 1832 and early in 1833, his successes were striking, and but for the interposition of European powers he might well have taken Constantinople. It was clear that the control of Egypt by Constantinople was not likely to be very strong, and it was not impossible that some of the fruits of the new treaty with Turkey would not mature. The suggestion came naturally that an effort be made to ascertain "how far it may be desirable and practicable to form commercial relations with the Pasha of that country [Egypt], distinct from those with the Porte." The first task, therefore, was to discover how much independent authority the ruler of Egypt might have in framing commercial arrangements. That point covered, Hodgson was to "ascertain his disposition towards the United States, and the practicability of entering into some arrangement favorable



to American commerce." This mission was not one that could gracefully be undertaken in the open, and it is not surprising to find Hodgson enjoined to keep his business in strictest confidence and to conduct it with the greatest circumspection.<sup>93</sup>

An agency to Canada grew out of charges that the British were acting unfairly. The Canadian rebellion of 1837 stirred the sympathies of Americans and many participated in the events connected with the rising.<sup>94</sup> This fact and the general unpopularity of Americans in Canada contributed to make matters go hard with those who were arrested.<sup>95</sup> It was claimed that citizens of the United States were arrested and imprisoned on suspicion, and kept in confinement under circumstances of hardship and cruelty, without any prospect of prompt trial. In April, 1838, Aaron Vail was sent as a special agent, fortified with letters of introduction from the British minister at Washington, and directed to make a careful investigation, and if the circumstances warranted, informal representations to the

<sup>93</sup> McLane, Secretary of State, to Hodgson, Oct. 10, 1833, MS. Inst. Sp. Miss., I, 103-106; see, also, instructions to Porter, Oct. 10, 1833, March 31, 1834, May 2, Sept. 10, 1835, MS. Inst. Turkey, I; despatches, June 3, 4, July 3, Oct. 28, Nov. 11, 1834, MS. Desp. Turkey, IV; no communications from Hodgson during this mission.

<sup>94</sup> Second annual message of Van Buren, Dec. 3, 1838, Richardson, Messages and Papers, III, 485-486; J. B. McMaster, A History of the People of the United States, from the Revolution to the Civil War (New York, 1883-1913), VI, 434 ff.

<sup>95</sup> Third annual message of Van Buren, Dec. 2, 1839, Richardson, Messages and Papers, III, 532.



Canadian authorities. He completed the investigations, "aided by the civil and military authorities" of Canada, and made a complete report May 5, 1838.<sup>96</sup> For such a mission no other means was available save a special agency.

A secret mission to Cuba grew out of the claims treaty with Spain made in 1834. The claims had arisen as a result of the paper blockades and interdictions upon neutral commerce which occurred during the wars between Spain and her revolting colonies in the second decade and early in the third decade of the nineteenth century. The United States made prompt claim for damages, but matters dragged along until after the death of Ferdinand, when a treaty was finally negotiated.<sup>97</sup> After the signing of the treaty difficulties did not end. The domestic problems in Spain and her financial embarrassments became so acute that after the fall of Mendizabal only one more payment was made. Futile negotiations were carried on from the time of the first default, in February, 1837, until February, 1841.<sup>98</sup> The Espartero government was faced

<sup>96</sup> Forsyth to Vail, April 3, 1838, MS. Inst. Sp. Miss., I, 165-166; Vail to Forsyth, April 21, May 5, 1838, MS. Special Agent Bundle; Serial 331, 25 Cong. 2 Sess., H. Doc. 440, 3-4. Forsyth notified the British minister, Fox, of Vail's appointment, April 3, 1838. Serial 392, 27 Cong. 1 Sess., H. Doc. 39, 2.

<sup>97</sup> Van Buren to Van Ness, Oct. 2, 1829, Serial 269, 23 Cong. 2 Sess., Sen. Doc. 147, 4; Haswell, *Treaties*, 1387.

<sup>98</sup> Webster to Wise, Feb. 15, 1842, MS. Inst. Sp. Miss., I, 181-186.

with enormous difficulties,<sup>99</sup> but showed a sincere disposition to meet the national obligations as best it could.<sup>100</sup> The agreement arrived at by the American chargé and the Spanish minister of foreign affairs, in April, 1841, provided that an agent should repair to Cuba and there receive the money due. The person selected was Tully R. Wise. But he was not a mere messenger, for experience with Spain had made it evident that obstacles, the exact nature of which could not always be foreseen, might arise. In this instance there was particular reason to expect trouble, for rumors were current that the captain general of Cuba intended to deduct an amount from the payment due as damages on account of the *Amistad*.<sup>101</sup> Wise, therefore, was necessarily empowered to discuss with the Cuban authorities whatever points might be raised.<sup>102</sup>

Another special agent was sent to Cuba in 1850, as a result of a filibustering expedition of Narciso Lopez,

<sup>99</sup> Cambridge Modern History, ed. A. W. Ward, G. W. Prothero, and S. Leathes (New York, 1902-1911), X, 242.

<sup>100</sup> First annual message of Tyler, Dec. 7, 1841, Richardson, Messages and Papers, IV, 78-79.

<sup>101</sup> For a brief account of the famous *Amistad* case, see Moore, Digest, V, 852-854.

<sup>102</sup> Webster to Wise, loc. cit.; other communications from Webster, Feb. 15, 21, June 3, Aug. 16, 1842, MS. Inst. Sp. Miss., I; letter from Wise, June 23, 1842, MS. Misc. Letters. Wise's report of success, dated April 7, 1842, is to be found as an enclosure in J. W. Foster, minister to Spain, to Frelinghuysen, Feb. 14, 1884, MS. Desp. Spain, CVIII. Thomas Cookendorfer was also serving as agent to the West Indies at the time of Wise's mission. Serial 446, H. Rpt. 484, 17.

who proposed to free the island from Spain. The activities of Lopez in the United States were so well known that President Taylor issued a proclamation warning American citizens that if they were connected with such an expedition they would "forfeit their claim to the protection of their country . . . no matter to what extremities they may be reduced."<sup>103</sup> The proclamation was not supported by sufficiently zealous action,<sup>104</sup> and though the effort of Lopez to start from New York in 1849 was balked, he succeeded in getting off from New Orleans early the next year. He went in the steamer *Creole*, but part of his men sailed in the barque *Georgiana*, of Maine, and the brig *Susan Loud*, of Massachusetts, both of which were bound for, and carried *bona fide* passengers for, Chagres. In any case, the masters of the vessels were acting in complicity with Lopez, for they met at Contoy Island, off Yucatan and under Mexican sovereignty, by previous arrangement. There some or all of the volunteers transferred to the *Creole*, which steamed off to Cuba.<sup>105</sup> One of the two boats was without a master because

<sup>103</sup> Aug. 11, 1849, Richardson, Messages and Papers, V, 7-8.

<sup>104</sup> Rose Greenhow, wife of Robert Greenhow, wrote Calhoun, Aug. 29, 1849, "The Government here are in the *secret* and have done no more in the matter of the *Proclamation* than regard for appearances demanded." "Correspondence of John C. Calhoun," ed. J. F. Jameson, Ann. Rpt. Am. Hist. Ass., 1899, II, 1204.

<sup>105</sup> Chadwick, Relations of the United States and Spain, 230-231; J. M. Callahan, Cuba and International Relations, a Historical Study in American Diplomacy (Baltimore, 1899), 224-225; J. H. Latané, "The Diplomacy of the United States in Regard to Cuba," Ann. Rpt. Am. Hist. Ass., 1897, 234-236.

he had been taken away with the *Creole*.<sup>106</sup> Before the ships, "in consequence of calms and currents" and other circumstances, could sail for Chagres or follow Lopez, they were captured by the Spanish at Contoy, May 18, 1850,<sup>107</sup> and all on board carried to Havana, the vessels following, manned by prize crews.

The captain general of Cuba regarded the ships as part of the Lopez expedition, "being loaded with coals, provisions, and other effects, together with a portion of the bandits," and he put both crews and passengers in confinement.<sup>108</sup> The temper of the Cuban officials was not improved by the escape of Lopez, who was not detained at Key West because of "insufficient evidence."<sup>109</sup> The Taylor administration was alarmed, and not unnaturally. Cuba's government was known to be a despotism, and the use of the word "bandits" with regard to the prisoners, and "piratical" as descriptive of the expedition,<sup>110</sup> was ominous. Moreover, the Spanish minister asserted that "they have—and with reason—been called pirates by the government of the

<sup>106</sup> The master of the *Susan Loud*. Chadwick, *Relations of the United States and Spain*, 233.

<sup>107</sup> Serial 641, 32 Cong. 1 Sess., H. Ex. Doc. 83, 46-47.

<sup>108</sup> Serial 641, Doc. 83, 46-47.

<sup>109</sup> Latané, "Diplomacy of the United States in Regard to Cuba," 236; Chadwick, *Relations of the United States and Spain*, 232; and especially Callahan, *Cuba and International Relations*, 224.

<sup>110</sup> Captain general to Calderon, Spanish minister in Washington, communicated to Clayton by Calderon, May 31, 1850, Serial 641, Doc. 83, 42 ff.

United States,"<sup>111</sup> making, in that fashion, an effort to withdraw them from American protection under the threat contained in Taylor's proclamation. If the ordinary procedure was followed,—that is, if the matter were taken up with the Spanish government at Madrid, which would refer to the Cuban officials for a report, and then discuss matters with the American minister only after the report had been received,—orders for the release of the prisoners might well be delayed until some had been executed, or until many had suffered from confinement in an unhealthful climate.<sup>112</sup> The effort by the American consular officer, R. B. Campbell, to discuss matters with the captain general had been rebuffed on the ground that neither had diplomatic powers.<sup>113</sup>

Such were the circumstances which led to the appointment of Commodore Charles Morris as a special agent to go in a warship to Havana, there to demand the release of all the Contoy prisoners, not one of whom had participated in the attack on Cardenas, all of whom had been taken prisoner while within Mexican jurisdiction, and some of whom, at least, were *bona fide* passengers for Panama, on their way to California. It was hoped that sending a naval officer, whose demand would have behind it the moral force

<sup>111</sup> Calderon to Clayton, June 7, 1850, Serial 641, Doc. 83, 52-53.

<sup>112</sup> See, for description of ordinary procedure, first annual message of Pierce, Dec. 5, 1853, Richardson, Messages and Papers, V, 208-209:

<sup>113</sup> Campbell to Clayton, Serial 641, Doc. 83, 120-121.

of American warships, would accomplish the release, or in any event protect the lives, of the prisoners while the matter was being threshed out in Madrid.<sup>114</sup> To give the mission every chance of success, a tone of firmness amounting almost to menace was adopted.<sup>115</sup> The American minister in Madrid was sent a copy of the instructions to Morris<sup>116</sup> and entered into a spirited discussion with the Spanish minister of state. The captain general of Cuba "declined receiving any communication as an official one from the government of the United States, because he had no authority to act in any manner upon diplomatic subjects," but he expressed his readiness to receive any communication that Morris might make as an officer of the navy. Morris insisted that he "could only act in conformity" with his instructions. After these declarations, punctilio was dropped and the points of difficulty were discussed.<sup>117</sup> The result of the representations in

<sup>114</sup> Clayton to Morris, June 29, 1850, MS. Inst. Sp. Miss., I, 313-317; Serial 641, Doc. 83, 5-7; Serial 591, 31 Cong. 2 Sess., Sen. Ex. Doc. 41, 4-6, 3-4.

<sup>115</sup> The President "recognized no right on the part of the Spanish authorities to try and punish the prisoners taken at Contoy, and . . . he will view their punishment by the authorities of Cuba as an *outrage* upon the rights of this country." Clayton to Morris, loc. cit. "I shall await the result of your application with great anxiety. If in the meantime the prisoners should be executed by the authorities of Cuba, I need not say to you what I think will be the consequence." Clayton to Barringer, minister to Spain, July 1, 1850, Serial 591, Doc. 41, 3-4.

<sup>116</sup> Clayton to Barringer, loc. cit.

<sup>117</sup> Morris' report, July 23, 1850, MS. Misc. Letters; Serial 641, Doc. 83, 102-109; correspondence relative to Morris, July 9,

Havana and Spain was the release of most of those captured and the pardon of the few who were tried and sentenced to hard labor. But the *Georgiana* and *Susan Loud* were confiscated by a "prize court" without effective protest on the part of the United States.<sup>118</sup>

Lopez was not deterred by such relatively minor misfortunes from another and more ambitious attempt. Late in the summer of 1851 he made a new expedition to Cuba, landed four hundred and eighty men, and sent the steamer back to the United States. He divided his party, and the baggage guard, after defeat, embarked in small boats and was captured: The main body was cut to pieces and Lopez captured. Those taken in the boats were executed as "pirates" and the remnants of the main body were sentenced to hard labor. Commodore Foxhall A. Parker was directed by the Department of State to proceed to Havana, "obtain an audience of the Governor and Captain General of Cuba," express regret at the severity of the punishment, and call for proof of guilt of the Americans who were executed. He was also to get a satisfactory explanation of shots "fired over" the United States mail steamer *Falcon* and the boarding of that vessel by Spanish officials.<sup>119</sup> The captain gen-

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1850, MS. Notes to Spanish Legation, VI; July 12, 16, 1850, MS. Consular Desp. Havana, XXIII.

<sup>118</sup> Chadwick, *Relations of the United States and Spain*, 234-236; R. G. Caldwell, *Lopez Expeditions to Cuba, 1848-1851* (Princeton, 1915).

<sup>119</sup> Derrick, acting, to Parker, Aug. 23, 1851, MS. Inst. Sp. Miss., I, 333-335; Serial 611, 32 Cong. 1 Sess., Sen. Ex. Doc. 1, 28; Serial 634, H. Ex. Doc. 2, 28.



eral saw Parker promptly, and though he made it repeatedly evident that he had no "diplomatic powers," actually dealt with the American representative in much the same way that Morris had been dealt with the previous year, gave explanation of the *Falcon* incident, and ultimately released such of the prisoners as remained in Cuba.<sup>120</sup>

A special agent was sent to the British Northwest in 1858. During the excitement of the Fraser River gold rush considerable friction developed between the miners emigrating from the United States and the Hudson Bay Company, which practically had charge of the government in that region. In order to quiet the difficulties and remove restrictions against the immigration of Americans, John Nugent was despatched to make representations to the governor and to report on conditions.<sup>121</sup>

The Civil War furnished occasion for sending at least two special agents to Canada. The first of these was George Ashmun. His mission occurred in the

<sup>120</sup> Parker to Secretary of State, Sept. 6, 12, 25, Oct. 5, 1851, MS. Misc. Letters; Serial 611, Doc. 1, 30-40; Serial 634, Doc. 2, 30-40; Serial 637, 32 Cong. 1 Sess., H. Ex. Doc. 19; Chadwick, *Relations of the United States and Spain*, 236-239; Callahan, *Cuba and International Relations*, 226; Latané, "Diplomacy of the United States in regard to Cuba," 236-237; Caldwell, *Lopez Expeditions to Cuba*.

<sup>121</sup> Appointment and instructions, Aug. 2, 1858, MS. Domestic Letters, XLIX, 80; letters from Nugent, Sept. 6, 25, Oct. 25, 1858, MS. Territorial Papers, Territory of Washington; report, Jan. 8, 1859, *ibid.*, 289-431; Serial 984, 35 Cong. 2 Sess., Sen. Ex. Doc. 29; Serial 1014, H. Ex. Doc. 111.

earliest days of the Civil War, before Secretary of State Seward had really found himself and settled down to the steady and calm management of the complicated problems which the United States had to face. He was still under the spell of the excited and impracticable ideas of foreign policy which precipitated his "Thoughts for the President's Consideration" on April 1, 1861.<sup>122</sup> Indeed, this incident is midway in time between that exhibition of folly and his "reckless" despatch of May 21, which assumed a menacing tone to Great Britain.<sup>123</sup> The Confederates were seeking ships for a navy or to serve as privateers. It came to Seward's ears that they had bought the iron steamer *Peerless* at Toronto, that the vessel was to pass down the St. Lawrence under British papers and the British flag, and then assume the character of a Confederate privateer when she reached the open sea. Seward lost not a moment in securing an interview with Lord Lyons, the British minister in Washington. He asked Lord Lyons to direct the governor general of Canada to detain the vessel pending inquiry.

His request was met with some of the same sort of legal difficulties that were to harass Charles Francis Adams, American minister to Great Britain, somewhat later. Where were the proofs of sale and illegal purpose? Besides, a minister could not give directions to the governor general. Seward was in no mood to

<sup>122</sup> J. F. Rhodes, *History of the United States from the Compromise of 1850* (New York, 1900-1906), III, 341.

<sup>123</sup> Rhodes, *History of the United States*, III, 423.

be put aside. In his own words, "I stated . . . that the Government could not tolerate the fitting out and departure of piratical vessels on the *St. Lawrence*, and that I should direct the *Peerless* to be seized and detained, if the United States forces should have reliable information that she had been sold, or contracted to be sold, and has been delivered, or is to be delivered to the insurgents . . . under whatever flag or papers she may bear."<sup>124</sup> It was no mere idle threat. The orders were issued and a copy was sent to Lord Lyons. Seward, moreover, was determined that not only the *Peerless* but any other vessel of like character should be balked of her purpose. He sent George Ashmun to Canada "to watch and prevent just such transactions as the sale or fitting out of the *Peerless* for a pirate would have been." Lord Russell, the British foreign minister, showed uneasiness over Ashmun's mission in his intercourse with Adams, and Lord Lyons showed something more than uneasiness on the matter in his conversations with Seward. The upshot was the prompt recall of Ashmun.<sup>125</sup>

After this incident, however, relations with Canada during the period of the Civil War continued to fur-

<sup>124</sup> Seward to Lyons, May 1, 1861, MS. Notes to Gr. Britain, VIII, 417-418.

<sup>125</sup> Id. to id., May 1, 1861, loc. cit.; instructions to Ashmun, April 13, 18, 1861, MS. Special Agent Bundle; Adams to Seward, June 14, 1861, Serial 1117, 37 Cong. 2 Sess., Sen. Ex. Doc. 1, 105-106; Seward to Adams, July 1, 1861, *ibid.*, 112. Ashmun's recall, April 18, 1861, was the upshot of conversations which occurred before the formal note of May 1.

nish the occasion for a good deal of correspondence between the government of the United States and that of Canada.<sup>126</sup> The only official method by which this could be conducted was through the British minister at Washington, a fact of which Governor Morgan, of New York, was reminded by the governor general of Canada, Sir Edmund Head, at the very outbreak of the war.<sup>127</sup> When, in the fall of 1863, General Dix reported that there was danger of an invasion of the United States from Canada, and when Lord Lyons officially notified Seward that the Canadian government believed that there was a plot to destroy the city of Buffalo, it became necessary to take active measures.<sup>128</sup> By this time the government of Canada and that of the United States were working in harmony,

<sup>126</sup> J. M. Callahan, "The Northern Lake Frontier during the Civil War," *Ann. Rpt. Am. Hist. Ass.*, 1896, I, 335-360.

<sup>127</sup> "I need, however, hardly observe to your Excellency, that the British Minister at Washington is the only authorized channel of communication in official matters between the Government of the United States, or of any State, and the Government of this Province." Head to Morgan, April 25, 1861, *Sessional Papers of the Dominion of Canada*, Second Session of the First Parliament, 1869, VI, No. 75, 2.

<sup>128</sup> Lord Lyons to Lord Monck, Nov. 30, 1863, Jan. 13, 1864, Nov. 13, 1863, *Sessional Papers of the Dominion of Canada*, 2 Sess. 1 Parl., VI, No. 75, 34, 35, 73; Lord Monck to the Duke of Newcastle, Nov. 19, 1863, *ibid.*, 77; Lord Lyons to Seward, Nov. 11, 1863, *ibid.*, 75; Secretary of War Stanton to various mayors, to Major General Dix, to Preston King, to Major General Cox, to Major General Brooks, Nov. 11, 1863, *War of the Rebellion, Official Records of the Union and Confederate Armies*, Series 3, III, Serial 124, 1013-1115; replies, *ibid.*, 1022 ff.

the one to preserve its perfect neutrality, and the other to protect itself from outrages upon its northern frontier which might be perpetrated from Canada by Confederate sympathizers. The exigencies of the situation called for more effective contact than could be maintained through the roundabout official route. The consequence was that with the approval of Lord Lyons a special agent was despatched to Canada, November, 1863, to confer with the governor general, Lord Monck, "so as to secure a perfect understanding between the Governor General and the Agents of the United States."<sup>129</sup> The man selected for this mission was Preston King, who had recently retired from the United States Senate, where he had served a term as Senator from New York. His home was in Ogdensburg, and his personal knowledge of the whole situation was intimate. Moreover, he possessed the confidence of the American government. He was, therefore, a natural selection, but it was impossible to give him official position under the circumstances.

The history of the rise of parts of the British empire to the position of autonomous states within the commonwealth is a long one. When, in 1854, reciprocity with Canada was established, there were discussions between the government of the United States and Canadian officials, but the treaty was with Eng-

<sup>129</sup> Seward to Lyons, Nov. 12, 1863, Sessional Papers of the Dominion of Canada, 2 Sess. 1 Parl., VI, No. 75, 76-77; Lyons to Monck, Nov. 13, 1863, *ibid.*, 75; King to Seward, Nov. 14, 1863, MS. Special Agent Bundle.

land. When President Taft raised the issue in 1910, Canada had not yet made a treaty and did not maintain a representative in Washington. Those things were to be part of the consequences of the Great War. Yet Canada was not ready to have a treaty of reciprocity negotiated between the United States and Great Britain on behalf of the Dominion. Therefore, it was decided to pass uniform laws through the American Congress and the Canadian Parliament, and achieve a diplomatic result by legislative means. To have allowed the legislative bodies to frame the bills for enactment would have made the achievement of success impossible. The Department of State, therefore, sent Henry M. Hoyt and Charles M. Pepper to Ottawa, in the fall of 1910, to act with Consul General John G. Foster in negotiating with representatives of the Dominion cabinet. In January, 1911, two Canadian cabinet ministers came to Washington. The memoranda for the proposed reciprocal trade arrangement, which became the bases of the uniform bills designed for passage by the two legislative bodies, were agreed upon January 21.<sup>130</sup>

<sup>130</sup> Manuscript material, Department of State; Serial 5942, 61 Cong. 3 Sess., Sen. Doc. 787; Quarterly Review, CCXIV, 491, 496; Journal of Political Economy, XIX, 233-237, 514-515, 548-549; American Review of Reviews, XLIII, 644; Who's Who in America, VI, 960; IX, 852, 1922.

## CHAPTER IX

### AGENTS TO INTERNATIONAL CONFERENCES

Attendance upon an international conference is by nature special. Conferences are occasional occurrences. They vary in nature and subject matter. There cannot be permanent officials to conferences, therefore, and one would expect to find fairly uniform practice in favor of the use of executive agents for this purpose. This expectation is strengthened by the fact that at conferences to negotiate peace the United States has usually been represented by special agents. The fact is, however, that practice in this regard has been far from uniform, and only relatively recently has the employment of executive agents to international conferences become a settled custom.

The first agent sent to an international conference appears to be Alexander McRae.<sup>1</sup> He was a close

<sup>1</sup> William Shaler was assigned an agency of somewhat similar character in 1814. He was attached to the American commission which negotiated the treaty of Ghent with Great Britain. In order to secure information concerning European affairs, the commissioners authorized Shaler, April 16, 1814, "to repair without any *ostensible* public character to any congress which is, or may be, holden by the Ministers of the belligerent powers negotiating a general peace through the good offices of the representatives of friendly states." In October it was determined to despatch him to Vienna, but his departure was postponed "in



friend of President Monroe, and "a man of talents and information."<sup>2</sup> His instructions, drafted by Adams, were shown to the President, and had his approval endorsed upon them.<sup>3</sup> The occasion was the same as that which produced the Monroe Doctrine, and McRae's mission belongs among the things considered in connection with the message of December 2, 1823. The air was full of rumors of the calling of a congress of European powers to discuss the situation in Spanish America. The congress of Aix-la-Chapelle had gone into American questions, and Spain had asked for assistance in subduing the recalcitrant colonies. At the congress of Verona, late in 1822, the request was repeated, and there seemed to be more than a likelihood that the European powers might meet and agree upon definite and possibly drastic action. Under these circumstances the American administration was extremely anxious to be informed of the progress of the discussions.

On December 15, therefore, McRae was sent with instructions to Minister Rush in England and to Minister Brown in Paris, and then, acting under their directions, he was to "proceed to any place where a European Congress may be held, with a view to the

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consequence . . . of news received from Paris, that it was probable the Congress would be dissolved before I could arrive at Vienna." Shaler's report, March 5, 1815, MS. Special Agent Bundle.

<sup>2</sup> J. Q. Adams, *Memoirs*, IV, 279.

<sup>3</sup> Dec. 15, 1823, MS. Inst. Sp. Miss., I, 25.

consideration of the affairs of Spain and South America.”<sup>4</sup> He was not to occupy the position of “unofficial observer” which has become more or less familiar in recent years. He was to keep his connection with the American government a secret and pick up what information he could, transmitting it to Washington for the benefit of the government.

McRae was not, in any sense, a participant in a conference. He was intended to be more nearly a spy upon a conference than a participant. His case, therefore, furnished no precedent when the United States was invited to take part in the Pan-American congress of 1825. At once the perennial fear that the country might be drawn into an international state of some sort was widespread. When President Adams, in a message to Congress, made a statement which could be tortured into an assertion that he could send plenipotentiaries without the advice and consent of the Senate, it precipitated a political storm.<sup>5</sup> The question of sending delegates had to be fought through both houses in order to get an appropriation, and then the battle was renewed in the Senate over the nominations.<sup>6</sup> The upshot was a very clear and definite demonstration of the opinion of both President and

<sup>4</sup> MS. Inst. Sp. Miss., I, 25-26; eight despatches from McRae, Aug. 6, 1824,—Dec. 13, 1825, MS. Special Agent Bundle; Secretary of State to McRae, ending mission, Aug. 6, 1824, *ibid.*; see also Rush to Adams, July 10, 1824, MS. Desp. Gr. Britain, XXX.

<sup>5</sup> Above, 224-237.

<sup>6</sup> Matters were delayed so long by the dispute that the congress had adjourned before the United States delegates arrived.

Congress that the executive alone could not appoint representatives of a diplomatic character to represent the United States in an international congress, much less give them the title of minister, without an appropriation for the purpose and the consent of the Senate to the nominations. That appears to have remained the official opinion for many years.

The notion of participation in a Pan-American congress was practically dormant until Secretary of State Blaine's attempt to revive interest in 1881. His successor, Frelinghuysen, put a quietus upon that effort. When the conference was actually called in 1889, it was authorized and approved by Congress and the names of the delegates were submitted to the Senate for approval.<sup>7</sup> When, however, the second Pan-American conference was held at Mexico City in 1901, the procedure was different. The executive still felt it necessary to ask Congress in advance for an appropriation to defray the expenses of participation,<sup>8</sup> but did not feel it incumbent upon him to send in nominations of the delegates to the Senate, though the statute making the appropriation did not confer authority upon the President to make the appointment alone.<sup>9</sup> That instance set the precedent since followed

<sup>7</sup> Minutes of the International American Conference (Washington, 1890), 2; For. Rel., 1888, 1658; Sen. Ex. Jol., XXVII, 52.

<sup>8</sup> Stat. at Large, XXXI, 637, 1179; Cong. Record, 56 Cong. 1 Sess., XXXIII, 4272.

<sup>9</sup> Checked in executive nominations and confirmations, Cong. Record. Instructions, For. Rel., 1906, 1572-1576; report, Serial 4241, 57 Cong. 1 Sess., Sen. Doc. 330.

in Pan-American conferences.<sup>10</sup> What has just been remarked concerning the Pan-American conferences from 1901 onward applies to The Hague conferences of 1899 and 1907. Congress in each case provided for American participation without authorizing the President to make the appointments,<sup>11</sup> but Andrew D. White and his associates as well as Joseph H. Choate and his colleagues were appointed upon the sole responsibility of the President and without the concurrence of the Senate.<sup>12</sup>

The Hague conferences were not the first European conferences to attract American attention. While it is true that the United States generally refrained from participation, and only infrequently, and then often tardily, adhered to the action of European congresses, some issues slowly but surely drew American representatives to Europe. Specifically, the monetary question became so acute, and its international bearings so

<sup>10</sup> For other Pan-American conferences, see note A at end of chapter.

<sup>11</sup> Stat. at Large, XXXIV, 118.

<sup>12</sup> The fact that in each instance the instructions were dated after Congress had adjourned, and that in each case the work of the conference was complete before Congress reassembled, does not allow a categorical assertion that the President would not have nominated these men to the Senate had it been in session. But the probabilities, in view of the practice of McKinley and Roosevelt in other cases, are that these men were regarded as executive agents. Moreover, the instructions follow so closely upon the adjournment of Congress that the delegations must have been nearly, if not actually, completed before adjournment, and the names could have been sent in had the President so desired. See, for example, *New York Tribune*, April 7, 1899.

evident, that the United States not only participated in international conferences, but assumed leadership in promoting them. For many years, however, it was the usual practice to nominate to the Senate the commissioner who represented the United States.

In 1863 the United States was invited by Prussia to participate in the international statistical congress. The invitation was not received until after the adjournment of the special session of the Senate,<sup>13</sup> and the meeting had been held and its work completed<sup>14</sup> before the Senate reconvened.<sup>15</sup> The President appointed Samuel B. Ruggles commissioner on the part of the United States, without either an appropriation, special authority from Congress to make the appointment, or nomination to the Senate at the close of the recess. The congress was not wholly official in character, delegates from statistical and other learned societies as well as cities and states being admitted along with national delegates.<sup>16</sup> Four conferences had been held previously, but no official representative of the United States had been sent.<sup>17</sup> The business cannot be said to have been diplomatic in character. For these reasons it may very well have seemed unimportant to make a nomination to the Senate. In any

<sup>13</sup> March 14, 1863.

<sup>14</sup> Sept. 11, 1863.

<sup>15</sup> Dec. 7, 1863.

<sup>16</sup> Serial 1615, 43 Cong. 1 Sess., H. Ex. Doc. 289, 23.

<sup>17</sup> Serial 1615, Doc. 289, 3, 6, 12, 68, 76, 84; Serial 1466, 42 Cong. 1 Sess., Sen. Ex. Doc. 7, 7.

case, it cannot be set up as an important precedent, because the circumstances are such that it is impossible to tell whether it was or was not regarded as a recess appointment.<sup>18</sup>

At the next meeting of the statistical congress, at Florence, in 1867, no representative of the United States, official or unofficial, was present. The seventh session was held in 1869, at The Hague, and again Ruggles was appointed an official delegate from the United States, again without being nominated to the Senate.<sup>19</sup> Congress made an appropriation for the expenses of delegates to the eighth session at St. Petersburg, in 1872,<sup>20</sup> and though the President was not specifically authorized by the statute to do so, he appointed Edward Young, Edwin M. Snow, and William Barnes delegates on the part of the United States, without submitting their names to the Senate.<sup>21</sup> The statistical congress of 1863, however, led to American participation in European discussions of monetary standards. It was very much concerned with monetary matters and made specific recommendations with regard to them.<sup>22</sup>

When, a few years later, the United States was invited to participate in the Paris exposition of 1867,

<sup>18</sup> Serial 1176, 38 Cong. 1 Sess., Sen. Ex. Doc. 11; Serial 1189, H. Ex. Doc. 49.

<sup>19</sup> Serial 1615, Doc. 289, 18, 113; Sen. Ex. Jol., XVI, XVII.

<sup>20</sup> Stat. at Large, XVII, 368.

<sup>21</sup> Sen. Ex. Jol., XVIII; Serial 1615, Doc. 289, 34, 120.

<sup>22</sup> Serial 1320, 40 Cong. 2 Sess., Sen. Rpt. 117, 3.

it was not considered possible to have a regular commissioner without the action of Congress in making an appropriation. N. M. Beckwith expressed a willingness to serve gratuitously, and his services were accepted,<sup>23</sup> but after legislative provision had been made, the American commissioners were nominated to the Senate.<sup>24</sup> Among them was Samuel B. Ruggles, who was designated to represent the United States in matters relating to the adoption of a uniform system of weights, measures, and coins, as a member of an international committee.<sup>25</sup> After Ruggles had reached Paris and had entered upon his duties, the French minister in Washington drew Seward's attention to the monetary convention signed December 23, 1865, by France, Belgium, Italy, and Switzerland, and requested that the United States adhere to the treaty or state its objections.<sup>26</sup> Berthemy also suggested the possibility of an international conference, and after a sympathetic response from Seward,<sup>27</sup> he was

<sup>23</sup> Hunter, acting, to Bigelow, minister to France, June 5, 1865, Serial 1255, 39 Cong. 1 Sess., H. Ex. Doc. 12, 10-11; Reports of the United States Commissioners to the Paris Universal Exposition, 1867, ed. W. P. Blake (Washington, 1870), intro. by Seward, 4.

<sup>24</sup> Sen. Ex. Jol., XIV, 1161-1162.

<sup>25</sup> Seward to Ruggles, Oct. 9, 1866, Serial 1276, 39 Cong. 2 Sess., Sen. Ex. Doc. 5, 39.

<sup>26</sup> Berthemy to Seward, Jan. 4, 1867, Serial 1316, 40 Cong. 2 Sess., Sen. Ex. Doc. 14, 2-4.

<sup>27</sup> Feb. 13, 1867, Serial 1316, Doc. 14, 4-5.



instructed to propose American participation in such a conference.<sup>28</sup>

Congress was in recess and was not to meet until almost the date of the proposed conference.<sup>29</sup> No appropriation was needed, for there was a man on the spot whose duties were to represent American opinion on monetary questions on an international committee, meeting as part of the exposition. The new conference was simply to take over and deal more authoritatively with one of the questions before the committee. These were the circumstances under which Ruggles was empowered to attend the conference on behalf of the United States.<sup>30</sup> This was the second time Ruggles had represented the United States in an international conference without nomination to the Senate for that specific duty. Yet, as in the first instance, the situation was such that it cannot be drawn into an important precedent. Ruggles, in this instance, had been nominated to the Senate for substantially the same sort of duties. His powers were simply broadened somewhat, and for that the executive department had ample authority. The transfer from an international committee, meeting in Paris, to an international conference, in the same city, was largely a matter of form.

<sup>28</sup> May 27, 1867, Serial 1316, Doc. 14, 5-6.

<sup>29</sup> Sen. Ex. Jol., XV, 784, 785.

<sup>30</sup> Seward to Berthemy, May 29, 1867, Serial 1316, Doc. 14, 6; Seward to Ruggles, May 29, 1867, *ibid.*, 6-7; Ruggles to Seward, July 18, 1867, *ibid.*, 14; report, Serial 1426, 41 Cong. 2 Sess., H. Ex. Doc. 266.

The next conference met at the instance of the United States, though it was held in Paris. In the act of February 28, 1878, "to authorize the coinage of the standard silver dollar and to restore its legal-tender character," provision was made for an international monetary conference.<sup>31</sup> The commissioners who attended on behalf of the United States were appointed only after their nominations had been approved by the Senate.<sup>32</sup> After the failure of the 1878 conference, steps were taken promptly to see that another was called. The United States took an active part in the movement, but the formal initiative came from France.<sup>33</sup> The President did not undertake to participate without referring the matter to Congress and requesting an appropriation,<sup>34</sup> and he appointed delegates only after submitting the nominations for the approval of the Senate.<sup>35</sup> When the conference adjourned, July 31, 1881, to meet at a subsequent date, a new appropriation was sought.<sup>36</sup> At the conference

<sup>31</sup> Richardson, Messages and Papers, VII, 486; Serial 1832, 45 Cong. 3 Sess., Sen. Ex. Doc. 58, vii. The conference met from Aug. 10 to 29, 1878.

<sup>32</sup> Sen. Ex. Jol., XXI, 353, 354, 365, 369, 370-374.

<sup>33</sup> Observations addressed by Mr. Walker . . . to the delegates of the Latin Monetary Union assembled in conference in Paris, July 20, 1885, Serial 2333, 49 Cong. 1 Sess., Sen. Ex. Doc. 29, 19.

<sup>34</sup> Richardson, Messages and Papers, VII, 635.

<sup>35</sup> Sen. Ex. Jol., XXIII, 7, 8, 25, 30, 33; report, Serial 2429, 49 Cong. 1 Sess., H. Misc. Doc. 396.

<sup>36</sup> Serial 2031, 47 Cong. 1 Sess., H. Ex. Doc. 221, 2; Stat. at Large, XXII, 303. The conference met again in 1882. S. D. Horton represented the United States. Manuscript material, Department of State.

held at Paris in 1885, the United States was not officially represented. But George Walker, who had been in Europe in 1879 as a special agent to discuss the silver question, and who, in 1885, was consul general at Paris, was requested to act as a sort of observer. He was not admitted to the conference itself, but, acting in accord with the Italian delegates, he submitted a printed statement setting forth the views of the United States. At its close he made a report on the activities of the conference.<sup>37</sup>

The monetary question continued to harass the United States, and in the sundry civil bill of August 5, 1892, provision was made for another conference. But a new departure was made in the bill so far as the appointment of delegates was concerned. The President was specifically "authorized to appoint five commissioners" to represent the United States.<sup>38</sup> Three days later appointments were offered to Senators Allison and Jones, Representatives McCreary, General Francis A. Walker, president of the Massachusetts Institute of Technology, and to Henry W. Cannon, president of the Chase National Bank of New York City. On the resignation of General Walker, President E. Benjamin Andrews, of Brown University, was substituted,<sup>39</sup> and the delegation was com-

<sup>37</sup> Walker to Bayard, Aug. 20, 1885, Serial 2333, Doc. 29, 12-17; Observations addressed by Mr. Walker, *ibid.*, 17-21.

<sup>38</sup> Stat. at Large, XXVII, 349.

<sup>39</sup> Appointments, Aug. 8, Oct. 15, 1892, MS. Inst. Sp. Miss., IV, 57, 58, 66.

pleted with the appointment of Edwin H. Terrell, United States minister to Belgium.<sup>40</sup> These men were not to be regarded as "inferior officers," for neither a Senator nor a Representative could hold any other office of whatever character. The act of Congress simply embodied an authorization,—needless so far as the Constitution was concerned,—for the President to employ executive agents.<sup>41</sup>

The incident just related did not constitute the first occasion when the President was authorized to appoint a delegate to an international conference. A joint resolution of March 20, 1871, had authorized the President to appoint a commissioner to attend an international prison congress, and he appointed Enock C. Wines without referring the nomination to the Senate.<sup>42</sup> Again, by an act approved August 3, 1882,

<sup>40</sup> The conference was held at Brussels in the fall of 1892. Report, Serial 3062, 52 Cong. 2 Sess., Sen. Ex. Doc. 82.

<sup>41</sup> For similar bills in 1895 and 1897, see Stat. at Large, XXVIII, 962; XXIX, 624-625.

<sup>42</sup> Cong. Globe, 42 Cong. 1 Sess., 13, 19, 86, 172; Serial 1479, 42 Cong. 2 Sess., Sen. Ex. Doc. 39; Serial 1567, 42 Cong. 3 Sess., H. Ex. Doc. 185; Fish to Wines, March 25, 1871, MS. Inst. Sp. Miss., II, 76-77. The congress met in London in 1872.

Wines was similarly appointed to the second penitentiary congress which met at Stockholm in 1878, although the joint resolution of February 16, 1875, provided for a delegate to a prison conference in Rome. Cong. Record, 43 Cong. 2 Sess., III, 995, 1155, 1514; Serial 1858, 45 Cong. 3 Sess., H. Ex. Doc. 86, 3 ff. American representation was provided in the same way at the third and fourth congresses which met at Rome in 1885 and at St. Petersburg in 1890. After that the American delegates were nominated by the national prison association and commissioned

the President was authorized to invite other nations to appoint delegates to an international conference "for the purpose of fixing upon a meridian proper to be employed as a common zero of longitude and standard of time reckoning throughout the globe," and he was authorized also to appoint delegates to represent the United States.<sup>43</sup> Again, in 1888, in providing for an international conference to secure safety of life and property at sea, Congress authorized the President to appoint seven delegates, making some stipulations, however, from what groups he must choose.<sup>44</sup> Although the executive consulted Congress on many

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by the Department of State without referring the matter to the Senate. Paris, 1895, Serial 3353, 54 Cong. 1 Sess., Sen. Doc. 181; Brussels, 1900, Serial 4518, 57 Cong. 2 Sess., H. Doc. 374; Budapest, 1905, Serial 4676, 58 Cong. 2 Sess., H. Doc. 702.

The sundry civil appropriations bill, approved July 7, 1884, not only provided for the expenses of representatives to the Red Cross conference to be held at Geneva in September, 1884, but stated that they should be appointed by the President. Stat. at Large, XXIII, 194.

<sup>43</sup> Serial 2207, 48 Cong. 1 Sess., H. Ex. Doc. 138, 1; proceedings, Serial 2296, 48 Cong. 2 Sess., H. Ex. Doc. 14; Serial 2557, 50 Cong. 1 Sess., H. Ex. Doc. 61. The conference was held in Washington during Oct., 1884.

<sup>44</sup> Stat. at Large, XXV, 243; XXVI, 667; Serial 2683, 51 Cong. 1 Sess., Sen. Ex. Doc. 53; Richardson, Messages and Papers, IX, 33. The conference was held at Washington in 1889.

In 1896 Congress passed a bill "to reconvene the delegates of the United States to the International Marine Conference of 1889," in order that "the Secretary of State should be in a condition to call our delegates together to act upon the amendments proposed by Great Britain." Stat. at Large, XXIX, 4; Cong. Record, 54 Cong. 1 Sess., XXVIII, 828-829.

occasions when invitations for international conferences were issued to foreign nations, especially if appropriations were needed, such action was not necessary, nor was it uniformly practiced. In relatively few cases was the appointment of delegates specifically mentioned.<sup>45</sup>

Occasionally the President appointed "honorary" commissioners and delegates to scientific congresses, and later asked for an appropriation to pay expenses. Such was the procedure in the case of the electrical exhibition and congress held at Paris in 1881,<sup>46</sup> in spite of the fact that the President had previously requested an appropriation which had been neglected or refused.<sup>47</sup> In 1882, two scientists were appointed to represent the United States at a conference in Paris to consider the adoption of a common unit of electrical force, Congress having provided in advance for payment.<sup>48</sup> So frequent did these occasions become that President Arthur requested Congress to give him discretionary powers to send delegates to "social and scientific congresses for the discussion of important matters of general concern," and to provide a "comparatively small" annual appropriation to defray expenses.<sup>49</sup> After seven years had passed Presi-

<sup>45</sup> For conferences held in the United States, see note B at end of chapter.

<sup>46</sup> Richardson, *Messages and Papers*, VIII, 38.

<sup>47</sup> *Ibid.*, VII, 629.

<sup>48</sup> *Stat. at Large*, XXII, 127; Richardson, *Messages and Papers*, VIII, 127.

<sup>49</sup> *Ibid.*, 127, 176.

dent Harrison renewed the request, but again no attention was paid to the recommendation.<sup>50</sup>

In course of time it came to be a substantially settled practice for the President to make appointments of delegates to international gatherings without reference to the Senate.<sup>51</sup> The crystallization of practice appears to have taken place during the years between 1897 and 1906. Some instances of presidential appointments to important international gatherings during those years have already been cited. In the latter year two cases occurred. In April the United States was invited to participate in a conference with reference to wireless telegraphy. The invitation was accepted, and in June

<sup>50</sup> Richardson, Messages and Papers, IX, 111; see above, 137-138. Arthur and McKinley made similar requests regarding international expositions. Richardson, Messages and Papers, VIII, 240; X, 178.

<sup>51</sup> In 1885 President Cleveland exercised his "discretionary authority" in using the appropriation for suppressing epidemics to send Major G. M. Sternberg to a sanitary conference at Rome, without consulting the Senate. Richardson, Messages and Papers, VIII, 313. David Dudley Field was appointed, without the consent of the Senate, delegate to a congress on commercial law to be held at Brussels in 1887. It was postponed and there is no record of Field having attended. For. Rel., 1887, 43-44; MS. Inst. Sp. Miss., IV, 9. However, the American commissioners to the Samoan Islands conference which was held at Berlin in 1889 were appointed by the President with the advice and consent of the Senate. Serial 2698, 51 Cong. 1 Sess., Sen. Misc. Doc. 81; MS. Inst. Sp. Miss., IV, 15-17, 377. Elmer L. Corthell was commissioned delegate to the seventh international conference on navigation, held at Brussels in 1898, without the consent of the Senate or an appropriation from Congress. Serial 3847, 56 Cong. 1 Sess., Sen. Doc. 30.



the American delegates were instructed; they attended the conference in Berlin and signed the resulting convention.<sup>52</sup> In the same year a long-postponed Red Cross conference met at Geneva. As in the previous instance the delegates were appointed solely by the President, but in this case "in the capacity of plenipotentiaries."<sup>53</sup> The same procedure was followed in connection with the London naval conference of 1908 and 1909. Congress made an appropriation, and the President then appointed Rear Admiral Stockton and Professor G. G. Wilson as "delegates plenipotentiaries" without reference to the Senate.<sup>54</sup>

Even before it became customary for the President alone to appoint private citizens as delegates, commissioners, or plenipotentiaries to international conferences, he had occasionally appointed the American minister at the capital where a conference was held a delegate on the part of the United States without sending his name to the Senate. When, for example, an international conference was called by the French government, in 1880, to examine questions having reference to patents, designs, industrial models, and

<sup>52</sup> For. Rel., 1906, 1513-1528; *ibid.*, 1912, 444-466; Am. Jour. Int. Law, III, Supp., 330.

<sup>53</sup> For. Rel., 1906, 1528-1548. The statute making an appropriation did not authorize the President to appoint delegates, although it stipulated that one should be an officer of the army and one an officer of the navy. Stat. at Large, XXXIV, 118-119; see also *ibid.*, XXX, 59; XXXII, 80.

<sup>54</sup> Stat. at Large, XXXV, 380; For. Rel., 1909, 294 ff. For other examples, see note C at end of chapter.

trade-marks, Secretary Evarts accepted without the matter being referred to Congress. He then designated Edward F. Noyes, minister to France, and James O. Putnam, minister to Belgium, as delegates to represent the United States.<sup>55</sup> Substantially the same procedure was followed two years later when the French government called a conference for the protection of submarine cables. President Arthur appointed Minister Levi P. Morton and Henry Vignaud, secretary of the legation, delegates. When the conference reassembled the next year the same men were again authorized to attend, and were further authorized to sign the resulting convention.<sup>56</sup> Presi-

<sup>55</sup> Outrey, French minister in Washington, to Evarts, Jan. 9, 1880, *For. Rel.*, 1880, 382 ff.; Evarts to Outrey, Oct. 30, 1880, *ibid.*, 389; Evarts to Noyes, Oct. 30, 1880, *ibid.*, 378-379.

A similar appointment had been made in 1873. John M. Thacher was associated with John Jay, minister to Austria-Hungary, to represent the United States at a patent congress to be held in Vienna. The congress proved to be of an unofficial character, so Jay declined to act. Thacher did not present his credentials but attended the congress and made a report. *Serial* 1580, 43 Cong. 1 Sess., *Sen. Ex. Doc.* 27; *For. Rel.*, 1873, 73-77.

<sup>56</sup> Richardson, *Messages and Papers*, VIII, 127; Davis, acting, to Morton, Oct. 6, 1882, *For. Rel.*, 1883, 253. Morton to Frelinghuysen, Nov. 10, 1883, *For. Rel.*, 1883, 285; Morton and Vignaud to Frelinghuysen, Nov. 10, 1883, *ibid.*, 285-291; *Stat. at Large*, XXIV, 989. After the retirement of Morton as minister, his successor, Robert M. McLane, was substituted in succeeding conferences. *Serial* 2557, *H. Ex. Doc.* 60, 2-8.

Similarly John A. Kasson, minister to Germany, was authorized to represent the United States at the Congo conference held at Berlin in 1884. Henry S. Sanford was associated with him on condition that he serve without compensation. *Serial* 2341, 49

dent Cleveland followed the same policy in connection with the international copyright conference which met at Berne in September, 1885.<sup>57</sup>

President Roosevelt carried this practice somewhat further by detaching two regular diplomatic officers<sup>58</sup> from their stations and sending them as delegates to an international conference which dealt not with technical, scientific, or social questions, but with political

Cong. 1 Sess., Sen. Ex. Doc. 186, 12-19. In 1885 Richard B. Hubbard, minister to Japan, was instructed to attend a conference in Tokio for the revision of treaties concerning tariff and judicial administration. Moore, Digest, V, 755-757; For. Rel., 1887, 657, 665-666.

<sup>57</sup> Richardson, Messages and Papers, IX, 334-335.

The American minister to Spain headed the delegation to the conference for the protection of industrial property held at Madrid in 1890, but an act making an appropriation for the conference authorized the Secretary of State to appoint two experts. Cong. Record, 51 Cong. 1 Sess., XXI, 1694-1695. When another session met at Brussels in 1897 the United States was represented by Bellamy Storer, minister to Belgium, and Francis Forbes. Similarly the next session, which met at Brussels in 1900, was attended by Minister Lawrence Townsend together with Francis Forbes and Walter H. Chamberlain. Serial 5572, 61 Cong. 1 Sess., Sen. Doc. 136, 2; For. Rel., 1902, 92-97; see Stat. at Large, XXX, 644. In 1905 Albert F. Woods and W. P. Hill were associated with Henry White, ambassador to Italy, as delegates to the conference in Rome for the purpose of forming an agricultural institute. For. Rel., 1905, 559-561; *ibid.*, 1906, 944-946. Minister Townsend and William W. Goodrick attended the conference on maritime law held at Brussels in the same year. On Townsend's resignation, Henry Lane Wilson succeeded him as minister to Belgium and delegate to the maritime law conference. For. Rel., 1905, 69-74; *ibid.*, 1906, 72-79.

<sup>58</sup> Henry White, ambassador to Italy, and Samuel R. Gummeré, minister to Morocco.

questions of first-rate importance. The fundamental fact beneath the Algeciras conference of 1906 was the rivalry of Germany and France in Morocco. The conference was the direct outgrowth of the Kaiser's visit to Tangier. American interest rested upon the treaty of 1880 to which Germany, Austria-Hungary, Belgium, Denmark, Spain, France, Great Britain, Italy, Morocco, the Netherlands, Portugal, Sweden, and Norway were also parties. The treaty had to do with privileges of residence, trade, and protection, so that American interests involved in the crisis of 1905 and 1906 were political only indirectly and in a minor degree. "With the special political problems of influence and association affecting the relations of the Moroccan Empire, as a Mediterranean state, to the powers having interests in that great sea and whose concern lies naturally in the conservation and extension of its commerce for the common benefit of all, the United States have little to do beyond the expression of its wish that equality and stability be secured." Nevertheless, the delegates were not limited. On the contrary, "the complete dissociation of the United States from all motives or influences which might tend to thwart a perfect agreement of the powers should in case of need lend weight to your impartial counsels." The important rôle which the American delegates might play was thus foreseen and encouraged.<sup>59</sup>

<sup>59</sup> Root to White and Gummeré, *For. Rel.*, 1905, 678-680; see also *ibid.*, 1906, 1470-1513; *MS. Inst. Sp. Miss.*, IV, 431-432; *Cong. Record*, 59 Cong. 1 Sess., XL, 1421, 1529.

This practice of employing American diplomatic officers relieved the President of the necessity of securing an appropriation in advance of accepting an invitation to an international conference. It was never a very popular plan with the legislative branch. Congress having declined or neglected to heed the requests of Presidents Arthur, Harrison, and McKinley for general authority to accept such invitations saw the President accepting invitations nevertheless. Therefore, one of the last measures signed by President Taft, March 4, 1913, contained the following provision: "Hereafter the Executive shall not extend or accept any invitation to participate in any international congress, conference, or like event, without first having specific authority of law to do so."<sup>60</sup> This act has not been consistently observed.<sup>61</sup>

Another method of participating in an international conference was employed at the time of the Central American peace conference of 1907. William I. Buchanan represented the United States, and though he did not participate officially or sign the conventions that resulted, he did play an important part in bringing the negotiations to a successful issue. The conference grew out of the treaty signed aboard the *Marblehead* in 1906 by Guatemala, Salvador, and Honduras,

<sup>60</sup> Stat. at Large, XXXVII, 913; Cong. Record, 62 Cong. 3 Sess., XLIV, 4411.

<sup>61</sup> See above, 128-152, especially 149-152.

For a brief account of international conferences since 1913, see note D at end of chapter; for international expositions, see note E.

which provided for a meeting in Costa Rica of these three powers to frame a treaty of peace. The treaty of San José resulted, and was signed by the three parties to the *Marblehead* agreement and Costa Rica. One of the features of the treaty was that the presidents of Mexico and the United States were to act as umpires in case of dispute.<sup>62</sup> Peace, however, was not attained by the signing of treaties, and Presidents Roosevelt and Diaz invited the four powers and Nicaragua to send representatives to Washington. In that city a protocol was signed, September 17, 1907, looking to a conference in November of the same year, "for the purpose of discussing the steps to be taken and the measures to be adopted in order to adjust any differences which may exist" among the nations of Central America. The protocol also provided that the presidents of the United States and Mexico should appoint "representatives to lend their good and impartial offices in a purely friendly way toward the realization of the objects of the conference."<sup>63</sup> It was as a result of, and in the spirit of, that protocol that Buchanan was appointed.<sup>64</sup>

A conference for the revision of the treaties between Japan and the Western powers was held at Tokio in March, 1882. The preceding month, John A. Bingham, minister to Japan, had been instructed that if the

<sup>62</sup> Am. Jour. Int. Law, II, 125-126.

<sup>63</sup> For. Rel., 1907, 645.

<sup>64</sup> Ibid., 658; Calvo, Costa Rican minister to the United States, to Root, Dec. 27, 1907, *ibid.*, 664-665.

Japanese government made a specific request he might attend the conference. At the first session Bingham announced that he had been authorized to "participate in the deliberations, but in no wise to thereby commit the government of the United States to any action that may be taken." No decisive results were reached and the conference adjourned in September.<sup>65</sup> Minister Bingham is an early example of the diplomatic "observer,"<sup>66</sup> who became one of the conspicuous features of American participation in conferences at the close of the Great War.

Domestic political differences combined with constitutional checks and international exigencies to produce a large group of liaison agents between the United States and the associated powers in liquidating war questions. President Wilson fully intended that the United States should be represented upon the reparation commission, and wrote to Senator Lodge to that effect. The response of the chairman of the Senate committee on foreign relations was a chilling "judgment" that no power existed which permitted such

<sup>65</sup> Moore, *Digest*, V, 753-755; J. W. Foster, *American Diplomacy in the Orient* (Boston, 1903), 357; P. J. Treat, *Japan and the United States, 1853-1921* (Boston, 1921), 125.

<sup>66</sup> "Observers" do not differ much from the men who were sent on various occasions as "advisory delegates," who were not to sign the agreements arrived at or to take any responsibility for their enactment. See, for example, the correspondence concerning the Congo conference of 1884, Serial 2341, Doc. 186; also J. A. Kasson, "The Congo Conference and the President's Message," *North American Review*, CXLII, 119-133; above, 588, n. 56.



representation in advance of the ratification of the treaty.<sup>67</sup> The President did not openly defy this opinion, but circumvented it by informal though effective representation. Later, in advising and consenting to the separate treaties of peace, the Senate provided that the United States should not be represented in any body, agency, or commission save after specific statutory authorization. But Senator Lodge recognized that "no language" and "no law" could "prevent the President from sending a personal agent where he desires to send one."<sup>68</sup> The system of "observers," therefore, was inaugurated by President Wilson, and not by President Harding and Secretary Hughes, as has often been assumed. The device represented an executive attempt to circumvent senatorial invasion of executive power. It was not merely a partisan effort. Indeed, however much President Harding may have welcomed the modified responsibility of "unofficial" representation when he took office, it is manifest that after a year in office both the President and the Secretary of State had come to the conclusion that "official" representation would be better, but because of the attitude of influential Senators when the revised opinion was intimated, the matter was allowed to drop.

The first observer of the postwar series was assistant Secretary of the Treasury Rathbone. "Upon the departure of the American peace commissioners, in December, 1919, Mr. Albert Rathbone . . . remained in

<sup>67</sup> Above, 154-155.

<sup>68</sup> Above, 152-153

Paris and attended the meetings of the organization committee of the Reparation Commission. . . . At a meeting of the organization committee . . . on January 9, 1920, the United States Government was invited, through Mr. Rathbone, to attend unofficially the meetings of the commission. It was understood, of course, that the United States would not vote or take formal part in the work of the commission. Mr. Rathbone was authorized to accept the invitation thus extended, and on January 24, 1920, he and Colonel James A. Logan, Jr., attended unofficially the first meeting of the commission. Since Mr. Rathbone was unable to remain in Paris, Mr. Roland W. Boyden succeeded him in the spring of 1920 as special representative of the United States Treasury at Paris, and attended the meetings of the Reparation Commission in his place.”<sup>69</sup> Just before retiring from office, in order to give his successor a “free hand,” President Wilson withdrew the observers, but the new administration “felt that this Government should not forego the opportunity to be made fully cognizant of all the proceedings of the Reparation Commission, and that it was advisable, in order that our information should be complete and our interests should be properly safeguarded, that we should again have the advantages derived from the

<sup>69</sup> Secretary of State Hughes to Lodge, Jan. 16, 1923, Cong. Record, 67 Cong. 4 Sess., LXIV, 2460-2461. Instructions to Rathbone from Department of State, Dec. 19, 27, 1919, are given as part of another letter. Hughes to Lodge, Jan. 25, 1923, *ibid.*, 2461-2463.

position of our observers," and Mr. Boyden was instructed to resume his position and activities.<sup>70</sup>

These observers must not be regarded as nonparticipating reporters. The earliest instructions to Mr. Rathbone distinctly said that "in accordance with instructions received from time to time" he was "to give expression to the views of the Government" when deemed necessary in the performance of duty. Mr. Boyden, and his successor, Colonel Logan, operated under similar instructions, and played at times a very active and influential rôle in the work of the commission. The observers on the reparation commission did not act alone. From the outset there was an "assistant observer," authorized to act as alternate, and to attend meetings of subcommittees. In addition, there was a secretariat and clerical staff, which had at one time as many as twenty-one persons. Offices were maintained, and both the cost of the quarters and the salaries of the staff and all expenses save those of the observer and his assistant were defrayed by the reparation commission, not by the government of the United States. Thus the reparation commission in an official and very substantial way recognized the importance of American participation.<sup>71</sup> The observer and his assistant were paid from the emergency fund of the Department of State.<sup>72</sup>

<sup>70</sup> Hughes to Lodge, Jan. 25, 1923, *loc. cit.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.* When Boyden resigned in July, 1923, his place was taken by Colonel Logan. *Am. Rev. of Revs.*, LXVIII, 138.

What has been said of the reparation commission applies almost in its entirety to the Rhineland high commission. The United States had been active in all the steps leading up to its creation, and then participated unofficially, first through Mr. Pierrepont B. Noyes, as observer, and then through Major General Henry T. Allen, who held the double position of observer on behalf of the Department of State and commander of the army of occupation on behalf of the War Department.<sup>73</sup>

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Lieutenant Colonel Clarence D. Smith served as American representative on the Austrian branch of the reparations commission. He resigned in Feb., 1921, to give the Harding administration a free hand. *New York Times*, Feb. 22, 1921. The Austrian section was dissolved in April, so a new appointment was not necessary. *Ibid.*, April 2, 1921. However, Colonel Smith, as "unofficial observer," attended the conference held at Porto Rosiga in the spring of 1921 for the purpose of considering the economic rehabilitation of Austria. *Ibid.*, April 17, 1921; *Current History*, XIV, 699.

<sup>73</sup> The interallied Rhineland high commission was designed to replace the commission that had operated under the armistice. Difficulties arose when the treaty of Versailles went into effect, Jan. 10, 1920. Since the Senate had not ratified the agreement, it was hardly possible to appoint an American representative to the high commission. But the authority of that body in the occupied region would be seriously handicapped if the district controlled by the United States did not cooperate in enforcing its rulings. General Allen's decision to publish the regulations of the commission as military orders in the American zone was approved by the War Department and the Department of State if "no measure should conflict with the terms of the Armistice." This arrangement was not changed when the United States signed a separate treaty with Germany in Aug., 1920, and it served to increase the influence of American unofficial representation on the commission. H. T. Allen, *The Rhineland Occupation* (Indian-

The peace conference adjourned long before all the decisions incident to the close of the war had been reached. Its powers were bequeathed, on the one hand, to the conference of ambassadors residing in Paris, and on the other, to a series of special conferences called from time to time and virtually continuing the supreme council of the peace conference. When the conference of ambassadors met there was no serious problem for the United States, inasmuch as no "irreconcilable," "bitter ender," or "isolationist" went so far as to prevent the maintenance of a permanent diplomatic representative at the French capital. Hence it was easy to instruct the ambassador to attend such of the meetings as were devoted to discussion of problems in which the United States was vitally interested.

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apolis, 1927), intro., 119-124. Pierrepont B. Noyes, who had represented America on the old Rhineland commission and had taken a prominent part in the creation of the high commission, became the unofficial representative of the United States with the approval of the State Department. He organized his department in the same manner as the commissioners from France, Great Britain, and Belgium, and attended all meetings. Technically he did not vote, but his opinions had the same value. Colonel David L. Stone acted as military adviser and Mr. Day as deputy. In May, 1920, the Department of State withdrew the American civil representative, and the same month General Allen was instructed to assume his duties. Stone then became deputy. *Ibid.*, 143-144, 147-148. American occupation on the Rhine ended Jan. 24, 1923, and Feb. 2 the State Department instructed its observer to withdraw from the high commission. *New York Times*, Feb. 2, 8, 1923; Allen, *Rhineland Occupation*, 291, 293-295, 334-337; for an account of the work of the American observer, see *ibid.*, *passim*.

In other instances the counsellor of embassy could less conspicuously represent the United States.<sup>74</sup>

When the allied conferences were held the situation was much more difficult. They were usually attended by the prime ministers or foreign ministers of the allied powers. They met in the glare of publicity; any American designated to attend must be of high rank, and his every activity was open to comment at a moment when there was bitter political warfare on the subject in the United States. Under these circumstances the United States was unrepresented at the conference of Paris which met in January, 1920, for the ceremony of the ratification of the peace treaty. The United States also abstained from attendance upon the conference of London which met in February, 1920, to discuss the terms of the treaty with Turkey. The matter of the Turkish settlement, however, was one in which the United States had an active interest. When, therefore, the conference of San Remo met in April, 1920, the United States had an observer present,—Robert W. Johnson, ambassador to Italy.<sup>75</sup> Thereafter the United States was represented only intermittently.<sup>76</sup>

If opinion in the United States was sensitive on the question of participation in the activities of the repara-

<sup>74</sup> J. H. Latané, *A History of American Foreign Policy* (New York, 1927), 692.

<sup>75</sup> *Who's Who in America*, XIV, 1062; Levermore, *Third Year Book of the League of Nations*, 348.

<sup>76</sup> See note F at end of chapter.

tion commission and international conferences, it was doubly so in the case of the League of Nations. The League had been at the center of the fight in the Senate, and passionate feelings were generated. The League having been specifically "rejected," cooperation with it seemed more nearly a direct affront to the Senate than participation in other postwar activities. When, however, the Council instructed the Secretary General to invite the United States to be "represented at" or "associated with" the work of the Brussels financial conference, in September, 1920, the invitation was accepted. Roland Boyden, Keith McLeod, and Colonel R. H. Hess were made observers, with T. Shaw as secretary.<sup>77</sup> Thus the ice was broken and the United States has been represented, usually unofficially but sometimes officially, on commissions, committees, and at conferences.<sup>78</sup>

It has not been possible to mention all the international assemblages in which the United States has participated, nor even all the instances in which the President appointed delegates without nominating them to the Senate.<sup>79</sup> However, it has been shown that the initiative of the President in providing for American

<sup>77</sup> *Three Months of the League of Nations* (Boston, 1920), 71-86; *Handbook on the League of Nations, 1920-1924* (Boston, 1924), 214; *New York Times*, April 6, 1924.

<sup>78</sup> See note G at end of chapter.

<sup>79</sup> An attempt to make a complete, detailed study would involve a chapter of very bulky proportions. The cases cited are selected from those which were investigated in the belief that they fairly represent the development of practice.



participation was once very narrowly circumscribed, but that in course of time the President came to have an initiative almost complete, which has been somewhat curtailed by the act of 1913. There has been a steady drift toward presidential appointments. This was shown first in connection with technical and scientific gatherings, where the political interests of the United States were not involved.<sup>80</sup> It appeared again in the use of regular diplomatic officers as special agents in attendance upon international conferences. Finally, the practice developed to a point where appointments to all international conferences were purely presidential. The two most recent—and most important—instances are the peace conference at Paris and the conference on the limitation of armament in Washington. Rather than depart from that practice, “unofficial observers” have been used to a large extent since the peace conference.

#### NOTE A. PAN-AMERICAN CONFERENCES

The delegation headed by William I. Buchanan, which attended the third conference at Rio de Janeiro in 1906, was appointed by the President without consultation with the Senate, although there was no specific authorization in law for the executive to make the appointment alone. (Stat. at Large, XXXIV, 118; report, Serial 5073, 59 Cong. 2 Sess., Sen. Doc. 365; For. Rel., 1906, 1565-1625.) In like manner attendance at the fourth conference, which met at Buenos Aires in 1910, was provided for by Congress, but the appointments of Henry White and his associates were made by the President without consulting the Senate.

<sup>80</sup> It is interesting to note that the act of 1913 has been more frequently observed in connection with technical and scientific gatherings than political ones.

(Serial 5913, 61 Cong. 3 Sess., Sen. Doc. 744, 3; For. Rel., 1910, 12-60.) Congress voted an appropriation for the fifth conference, at Santiago in 1923, but the President appointed Henry P. Fletcher and the other delegates without submitting their names to the Senate or referring to the act of March 4, 1913. (Stat. at Large, XLII, 609.) The same procedure was followed in regard to the United States delegation, headed by Charles Evans Hughes, at the sixth conference at Havana in 1927. (Stat. at Large, XLIV, 1186.)

The first Pan-American medical congress met in Washington in the fall of 1893, the second three years later in Mexico City. (Serial 3561, 55 Cong. 1 Sess., Sen. Doc. 38). A series of sanitary conventions and an international sanitary bureau resulted from resolutions adopted at the second conference of American states. Congress voted appropriations for the sanitary bureau, but made no regulations in regard to representation at the conventions until 1914. Special appropriations were made for the sixth and seventh conferences and the President was authorized to appoint two officers connected with the public health service. (First, Washington, 1902, Serial 4419, 57 Cong. 2 Sess., Sen. Doc. 169; Serial 4587, 58 Cong. 2 Sess., Sen. Doc. 13. Second, Washington, 1905, For. Rel., 1909, 637-648. Third, Mexico City, 1907, *ibid.*, 1907, 840-842. Fourth, San José, Costa Rica, 1909, *ibid.*, 1909, 649-653. Fifth, Santiago, 1911. Sixth, Montevideo, 1920, Serial 6755, 63 Cong. 2 Sess., H. Doc. 892; Serial 7102, 64 Cong. 1 Sess., H. Doc. 659; Serial 7770, 66 Cong. 2 Sess., H. Doc. 765; Stat. at Large, XXXVIII, 779; XLI, 1022. Seventh, Havana, 1924, Serial, 8253, 68 Cong. 1 Sess., Sen. Doc. 22; Stat. at Large, XLIII, 112, 692. Eighth, Lima, 1927, *ibid.*, XLIV, 1402.)

In May, 1908, Congress made an appropriation "to enable the Government of the United States to be fittingly represented at the first Pan-American Scientific Congress to be held at Santiago during 1908," but Archibald C. Coolidge was appointed by the President without consulting the Senate. (*Ibid.*, XXXV, 380; report, Serial 5571, 61 Cong. 1 Sess., Sen. Doc. 64.) The second congress met at Washington in 1915. (Stat. at Large, XXXVIII, 450; For. Rel., 1914, 11-12; *ibid.*, 1915, 18-20, 24-25, 1310; *ibid.*, 1916, 5-10, 976-979.) The same procedure was followed

in the case of the international commission of jurists which met at Rio de Janeiro in 1912. (Serial 6326, 62 Cong. 2 Sess., H. Doc. 742; Serial 6500, 62 Cong. 3 Sess., H. Doc. 1343; Stat. at Large, XXXV, 680; XXXVIII, 313; For. Rel., 1912, 18-28.) The first Pan-American financial conference met at Washington in 1915, the second in 1920. (Stat. at Large, XXXVIII, 1127-1128; For. Rel., 1915, 20-24, 1310; *ibid.*, 1916, 18; Serial 7671, Sen. Doc. 261.)

#### NOTE B. CONFERENCES HELD IN THE UNITED STATES

Even before the meridian and marine conferences were held in Washington, a joint resolution signed May 14, 1880, "authorized" the President to call an international sanitary conference "to which the several powers". . . shall be invited to send delegates." An appropriation was voted the following year for the expenses of the conference, but no provision was made for American representation, although five delegates attended and signed the resolutions adopted. (Serial 1985, 47 Cong. Special Sess., Sen. Ex. Doc. 1; Cong. Record, 43 Cong. 3 Sess., XIV, 337, 630-632, 1119.) In 1887 President Cleveland, acting alone, appointed Secretary of State Bayard, William L. Putnam, and James B. Angell to meet with British representatives, in Washington, to adjust questions relating to fishery rights. (Serial 2512, 50 Cong. 1 Sess., Sen. Ex. Doc. 113, 117; above, 279 ff.) Eleven years later Congress made an appropriation for the expenses of "a joint commission to be appointed for the adjustment of differences between the United States and Great Britain in respect to the Dominion of Canada." The President alone appointed the commission composed of Fairbanks, Foster, Coolidge, Gray, Dingley, Kasson, and Faulkner, which met with British and Canadian representatives in Quebec and Washington in 1898 and 1899. (Stat. at Large, XXX, 653, 1117; MS. Inst. Sp. Miss., IV, 205-207, 373-374; T. J. Coolidge, *An Autobiography*, 1831-1920 (Boston, 1923), 267-269.) In 1897 Congress authorized the President to appoint five or more delegates to an international monetary conference and to call such a conference if he saw fit. (Stat. at Large, XXIX, 624-625.) Ten years later the President was authorized to call a conference on immigration or to send commissioners to such a conference. (*Ibid.*, XXXIV, 909; see

also *ibid.*, XXXIX, 894.) In 1912 the joint resolution which authorized the President to convey the desire of Congress that an international maritime conference be held provided for the appointment of a commission, the subjects to be discussed, and an appropriation. (*Ibid.*, XXXVII, 637-638; Serial 6757, 63 Cong. 2 Sess., H. Doc. 479; Stat. at Large, XXXVIII, 275.)

Even after it became customary for the President to appoint delegates to international conferences without consulting the Senate, the matter of inviting conferences to meet in the United States continued to be referred to Congress, especially if an appropriation was necessary. In 1905 a joint resolution "authorized and requested" the President to invite the prison conference to hold its 1910 session in Washington. (Serial 4831, 58 Cong. 3 Sess., H. Doc. 213; Stat. at Large, XXXIII, 1284; XXXV, 677; For. Rel., 1909, 8-9; Serial 6548, 63 Cong. 1 Sess., H. Doc. 52.) At the request of the Department of State, in 1907, the President was "authorized and requested" to invite the international congress on hygiene and demography to meet in Washington. (Serial 4675, 58 Cong. 2 Sess., H. Doc. 474; Stat. at Large, XXXIV, 1422; XXXV, 680; XXXVI, 874, 341, 1034; XXXVII, 102.) As a result of a communication from the Secretary of State concerning the participation of the United States in the international congress on tuberculosis, which was to meet in Washington in 1908, the Department of State was authorized to extend an invitation to other governments and an appropriation was made. (Serial 5072, 59 Cong. 2 Sess., Sen. Doc. 343; Stat. at Large, XXXV, 568, 179, 479.) In 1909 the President was authorized to invite the international congress on applied chemistry to hold its eighth meeting in the United States without involving any appropriation for expense. (*Ibid.*, 1170.) Following a recommendation in the annual message of 1910, President Taft was authorized to extend an invitation to the international congress on industrial insurance. (For. Rel., 1910, lix; Serial 6071, 61 Cong. 3 Sess., H. Doc. 1279; Stat. at Large, XXXVI, 1034; XXXVII, 477.) A joint resolution of August 19, 1912, requested the President to direct the Secretary of State to invite foreign governments to participate in the fourth international congress on school hygiene to be held in 1913, but provided that no appropriation should be granted. (*Ibid.*, 642.)

However, Congress did not refuse to make appropriations for international conferences which were invited without consulting it. In 1897 and again in 1900 the American delegates to the industrial property conference were instructed by the Secretary of State to invite the conference to hold its next meeting in the United States. As a result of the acceptance of the invitation, the Department of State sent two requests to Congress, in 1901 and 1909, stating that it was "necessary that early provision should be made . . . for vesting in the Secretary of State the appointment of persons as delegates to the conference, and that an appropriation should be made for the expenses attendant upon the preparation for the sessions of the conference." There was some discussion in Congress before the appropriation "to defray the expenses" of the conference was voted, but it involved neither the power of the President to extend an invitation to the conference nor the appointment of delegates, who were commissioned without referring their names to the Senate. (Serial 4163, 56 Cong. 2 Sess., H. Doc. 418; Serial 6071, H. Doc. 1303; Cong. Record, 61 Cong. 1 Sess., XLIV, 4673-4674; Stat. at Large, XXXVI, 119, 1290; For. Rel., 1911, xxiii; *ibid.*, 1913, 1363-1374.) In 1900 the American delegates to the international railway congress invited that organization to hold its next session in Washington. A congressional appropriation was necessary in order that the United States might participate officially. It was voted April 28, 1904, at the request of the Secretary of State. (Serial 4518, H. Doc. 398; Stat. at Large, XXXIII, 505.) An appropriation was made for the international Red Cross conference which met at Washington in 1912, although Congress was not consulted in regard to the invitation. (*Ibid.*, XXXVI, 1034.) Under similar circumstances Secretary of Commerce and Labor Charles Nagel and Counsellor of the Department of State Chandler P. Anderson attended the fur seal conference which met at Washington in 1911. The resulting convention was ratified the same year. (Serial 6323, 62 Cong. 2 Sess., H. Doc., 916; see Stat. at Large, XXXIII, 586.)

#### NOTE C. DELEGATES APPOINTED BY THE PRESIDENT ALONE

An international sanitary convention was signed at Paris, December 3, 1903, by two American plenipotentiaries, Dr. H. D.

Geddings and Frank Anderson, appointed by the President without the consent of the Senate. (For. Rel., 1907, 434-476.) Similarly A. M. Laughlin and R. S. R. Hitt signed the arrangement completed at Rome, in 1907, establishing the international office of public health mentioned in the international sanitary convention. (Ibid., 1908, 493-498.) In 1909 Congress voted an appropriation for the expenses of Thorwald Solberg, who had represented the United States at an international conference for the protection of works of literature and art, which was held at Berlin the preceding October, although his name had not been submitted to the Senate and no appropriation had been asked in advance. (Stat. at Large, XXXV, 908; Serial 5557, 60 Cong. 2 Sess., H. Doc. 1208.) In the same year a bill was introduced in the Senate "to authorize the appointment of delegates to the Twelfth International Anti-Alcoholic Congress at London." No further action was taken when the Secretary of State reported that four delegates had already been appointed to serve without compensation so that an appropriation for the purpose was unnecessary. (Cong. Record, 61 Cong. 1 Sess., XLIV, 1358; Serial 5579, 61 Cong. 1 Sess., H. Doc. 30.) Two years later, however, a bill making an appropriation for the thirteenth congress at The Hague provided that the delegates should "be designated by the President." (Stat. at Large, XXXVI, 1034; Serial 6535, 63 Cong. 1 Sess., Sen. Doc. 44.)

The delegates to the third maritime law conference, held at Brussels in 1909 and 1910, were appointed by the President without the consent of the Senate after an appropriation from Congress had been requested and voted. (For. Rel., 1909, 653-657; *ibid.*, 1910, 105-109; *ibid.*, 1911, 14-28; Serial 5559, 60 Cong. 2 Sess., H. Doc. 1439; Stat. at Large, XXXV, 1019; XXXVI, 203.) The same procedure was followed at the international congresses for promoting uniform legislation regarding letters of exchange, which were held at The Hague in 1910 and 1912. (Ibid., XXXV, 680; XXXVI, 1364; Serial 5915, 61 Cong. 3 Sess., Sen. Doc. 57; Serial 6526, 63 Cong. 1 Sess., Sen. Doc. 162.) Although American representatives to the international radiotelegraph conference, which met at London in 1912, were appointed by the President alone, the Senate approved the agreements signed by the delegates. (Serial 6181, 62 Cong. 2



Sess., Sen. Doc. 553; Stat. at Large, XXXVIII, 102; For. Rel., 1913, 1375-1413.) The same procedure was followed in the series of opium conferences that resulted from the correspondence started by the United States in 1906. An international commission of inquiry met at Shanghai in 1909, at which the United States was represented by Charles H. Brent, Hamilton Wright, and Charles D. Tenney. (Ibid., 1908, 75 ff.; *ibid.*, 1909, 95 ff.; Stat. at Large, XXXV, 380; Serial 5657, 61 Cong. 2 Sess., Sen. Doc. 377.) For the purpose of incorporating the resolutions prepared at Shanghai into an international convention, a conference was held at The Hague in 1911. The American "delegates plenipotentiary" were appointed by the President without the consent of the Senate. (For. Rel., 1910, 292 ff.; *ibid.*, 1911, 54 ff.; *ibid.*, 1912, 182 ff.; Stat. at Large, XXXVI, 775.)

#### NOTE D. CONFERENCES HELD AFTER MARCH 4, 1913

The influence of the act of March 4, 1913, may be seen for the first time in the joint resolution of May 22, 1913, which authorized the President to accept an invitation to participate through delegates in the international conference on education to be held at The Hague in 1913, although it specifically provided that no appropriation was to be made. (Stat. at Large, XXXVIII, 236-237.) In October, the President was "authorized and respectfully requested to appoint delegates to attend and represent the United States" at a congress of the world's purity federation. (Ibid., 239, 782; XXXIX, 1134.) The next year the President was authorized to accept an invitation to the international congress of chambers of commerce which was to meet in Paris, again without an appropriation. (Serial 6755, H. Doc. 928; Stat. at Large, XXXVIII, 773. See also Serial 6754, 63 Cong. 2 Sess., H. Doc. 504; Stat. at Large, XXXVIII, 768.) In May, 1914, President Wilson asked for authority to accept an invitation to the international dental congress to be held in London, stating that no appropriation would be necessary. It was granted, together with authority to appoint fifteen delegates. (Serial 6755, H. Doc. 998; Stat. at Large, XXXVIII, 774. For similar messages, see Serial 6597, 63 Cong. 2 Sess., Sen. Docs. 400, 401; Serial 6754, H. Doc. 462; Serial 6755, H. Docs. 978, 997, 1132; see also Serial 6513, 63 Cong. 1 Sess.,



H. Rpt. 19. There is no record of authority having been granted in any of these cases.)

However, all the statutes referring to international conferences were not influenced by the act of March 4, 1913. The one of August 29, 1913, which made an appropriation for the expenses of delegates, "to be designated by the President," to attend the congress on alcoholism at Milan was exactly like that of 1911. (Stat. at Large, XXXVIII, 110.) Those providing for the congresses at Lausanne in 1921 and at Copenhagen in 1923 were similar, except that the number of delegates was limited to ten. (Ibid., XLI, 1217; XLII, 1548; Serial 8171, 67 Cong. 4 Sess., Sen. Doc. 322; Serial 8413, 68 Cong. 2 Sess., Sen. Doc. 204.) President Wilson's message of April 21, 1913, asked only for an appropriation for the second international opium conference which was to meet at The Hague in July, 1913. It was granted in October, although authority to send delegates had not been secured. (For. Rel., 1913, 215 ff.; Stat. at Large, XXXVIII, 208). Neither did the executive refer the matter to Congress the next year, but, acting alone, appointed Henry van Dyke, minister to the Netherlands, and Charles Denby, consul general at Vienna, to represent the United States at the third opium conference which met at The Hague in June, 1914. (For. Rel., 1914, 624 ff. For a brief account of the provision attached to the joint resolution which made an appropriation for the Geneva opium conference of 1924 and 1925, see above, 149.)

The executive acted independently in regard to the international conference on Spitzbergen which met at Christiania in 1914, where the United States was represented by Albert G. Schmedeman, minister to Norway, William M. Collier, Fred K. Nielsen, Franklin M. Gunther, and Alvey A. Adee. (For. Rel., 1914, 974-981.) A joint resolution of September 23, 1914, authorized the President to appoint "two officers of the United States connected with the Public Health Service" to represent the United States at the sixth Pan-American sanitary conference, which was to meet at Montevideo in December, and granted an appropriation. The message which had asked for the appropriation came from the Secretary of the Treasury enclosing a communication from the Department of State—the usual procedure before the act of March 4, 1913. (Stat. at Large, XXXVIII,

779; Serial 6755, Doc. 892; Serial 7102, Doc. 659.) The conference did not meet until 1920, however, and in May, President Wilson transmitted a report from the Secretary of State "for the consideration of the Congress and for its determination whether it will authorize that the United States be officially represented at the Sixth International Sanitary Conference and appropriate the sum necessary to meet the expenses incident to such representation." The next month the deficiency appropriation bill contained a clause similar to the joint resolution of 1911, which granted the request. (Serial 7770, Doc. 765; Stat. at Large, XLI, 1022.) In 1924 President Coolidge asked of Congress "the enactment of legislation and the granting of an appropriation to provide for the expenses of four delegates, . . . to be appointed by me" to represent the United States in the next Pan-American sanitary conference which was to meet at Havana. A joint resolution "empowered" the executive to appoint delegates and made an appropriation which was confirmed in the deficiency appropriation bill of December, 1924. (Serial 8253, Doc. 22; Stat. at Large, XLIII, 112, 692. For an account of conferences relating to the Great War and the Paris peace conference, see above, 142, 401-403.) The President did not ask authority to send representatives to the international conference on maritime law which met at Brussels in October, 1922, but an appropriation was voted in June. (Stat. at Large, XLII, 609; *New York Times*, Nov. 19, 1922; Report of the Delegates.) The President alone appointed the American representatives on the commission of jurists which met at The Hague in 1922 and 1923 as a result of the Washington conference on the limitation of armament. (See above, 197; Report of the Commission.) The same procedure was followed in sending Mr. Henning, of the Labor Department, to the conference on emigration held at Rome in 1924. (A. J. Toynbee, *Survey of International Affairs*, 1924 (London, 1926), 123-127.)

The effect of the act of March 4, 1913, on statutes authorizing the President to invite international conferences to meet in the United States is not as obvious. Before that statute, Congress had passed laws "authorizing" the President to extend invitations, and in some cases had specified that no appropriation would be made. In no case theretofore, however, had the President

requested authority to invite an international conference to meet in the United States. A joint resolution of May 9, 1914, "authorized" the President to extend an invitation to the international congress of Americanists without making an appropriation. (Stat. at Large, XXXVIII, 772; For. Rel., 1914, 8, 20.) In the case of the home education congress, no appropriation was voted but the executive was "authorized and requested" to invite foreign governments to participate. (Stat. at Large, XXXVIII, 775.) The same day, July 17, 1914, another joint resolution made similar provision in regard to an international farming congress. (For. Rel., 1914, 16-17; *ibid.*, 1915, 17-18; *ibid.*, 1916, 14-15; *ibid.*, 1917, 3-4; Stat. at Large, XXXVIII, 775, 1114; XXXIX, 475, 1168; XLI, 271; XLII, 1321.) The House report on the joint resolution authorizing and requesting the President to invite foreign governments to participate in an international conference on education referred to the act of March 4, 1913. (Serial 6560, 63 Cong. 2 Sess., H. Rpt. 825; Stat. at Large, XXXVIII, 1222; For. Rel., 1915, 16, 1310.) In July, 1919, the executive was authorized to extend invitations to other powers and to appoint delegates to a world cotton conference to meet in New Orleans, but no appropriation was provided. (Stat. at Large, XLI, 271. For the limitations imposed on the President regarding the international communications conference and the international labor conference, in 1919, see above, 144-148.) In February, 1924, President Coolidge transmitted a report of the Secretary of State "favoring legislation by Congress that will give governmental sanction to the holding of the Third World's Poultry Congress in the United States in 1927, and will authorize the Executive to invite participation therein by foreign governments." No appropriation was asked. (Serial 8253, Sen. Doc. 45.)

However, the act of March 4, 1913, seemed to exercise no influence concerning the international conferences provided for in the diplomatic and consular service bills. In 1914 an appropriation for the expenses of the international conference of the inter-parliamentary union was made and the President "requested" to extend an invitation. The same procedure was followed in regard to the Pan-American scientific congress and the international congress on alcoholism, except that the Secretary of

State was authorized to issue the invitations. (Stat. at Large, XXXVIII, 450, 453, 1126, 1127; XXXIX, 260, 1056; XL, 527; XLIII, 119, 692; Serial 8221, 68 Cong. 1 Sess., Sen. Rpt. 425.) The following year the President was authorized to extend invitations to other governments to take part in an international engineering congress, the Pan-American medical congress, and a meeting of bankers. Appropriations were granted for the last two. (Stat. at Large, XXXVIII, 1127-1128; For. Rel., 1915, 15, 16-17, 20-24, 1310; *ibid.*, 1916, 18; see also Serial 6560, H. Rpt. 1137.) The second Pan-American financial conference met at Washington in 1920 without any legislation concerning it. (Serial 7671, Doc. 261. For executive independence regarding the naval disarmament conference held at Washington in 1921 and 1922, see above, 143-144.) A year later the Central American states and the United States were represented at a conference in Washington without reference to Congress. (*New York Times*, Nov. 24, 1922; Feb. 8, 1923.) Congress was not consulted in regard to the conferences concerning Mexico which were held in 1914, 1916, and 1923. (See above, 501-506.)

#### NOTE E. INTERNATIONAL EXPOSITIONS

The practice regarding the participation of the United States in international expositions has been somewhat similar to that in international conferences. The President has usually submitted the invitations to Congress in order to secure appropriations, but he has not been bound by congressional action or failure to act. At the world's fair held in London in 1851, the United States was represented by a commissioner, and there was also a "central committee headed by the President of the United States, the American minister to Great Britain, and other distinguished Americans." There was no appropriation until 1855, however, when the money advanced for American exhibits was paid by the government. (Serial 6179, 62 Cong. 2 Sess., Sen. Doc. 917, 4.) The London industrial exhibition of 1862 was the next one in which the United States took part. Congress made an appropriation and authorized a commission to care for the interests of American exhibitors. It was appointed by the President and included the Secretary of State and the Secretary of the Interior. (Serial 1127, 37 Cong. 2 Sess., H. Ex. Doc. 15.)

Congress approved American participation in the universal exposition at Paris five years later. (Serial 1255, Doc. 12.)

"In the absence of any authority vested in the Executive to decide upon" the invitation to the Vienna international exposition of 1873, the Secretary of State submitted it to Congress. (Serial 1524, 42 Cong. 2 Sess., H. Misc. Doc. 10.) The statute of June 10, 1872, authorized the President, "by and with the advice and consent of the Senate," to appoint one or more agents. An appropriation was made later. (Serial 1587, 43 Cong. 1 Sess., Sen. Rpt. 451.) The United States was similarly represented at the Paris exhibitions in 1889 and 1900. (Serial 2753, 51 Cong. 1 Sess., H. Ex. Doc. 410, IX; Stat. at Large, XXX, 106, 645, 1117; see also *ibid.*, XXXV, 183.) In 1887 Secretary of State Bayard informed the Belgian minister that "a commission on behalf of this country could only be appointed in virtue of provision made therefor by Congress." (Serial 2603, 50 Cong. 1 Sess., H. Rpt. 1928.) The next year a joint resolution made the necessary provision for American participation in the Brussels exposition. (Serial 2652, 50 Cong. 2 Sess., H. Ex. Doc. 162.) No appropriation was made for the fine arts exhibition at Antwerp in 1894, but Congress accepted the invitation and authorized the President to appoint five commissioners. (Stat. at Large, XXVIII, 578.) Although an appropriation was voted for the international exposition held in Brussels three years later, no person was to receive a salary or compensation. (*Ibid.*, XXIX, 429; see also *ibid.*, XXXIII, 505.)

The failure of Congress to accept an invitation, to authorize the appointment of a commission, or to make an appropriation has not prevented the executive from sending a special agent or honorary commissioner to an international exposition. In January, 1863, Lincoln transmitted a communication from the Secretary of State concerning an international agricultural exhibition which was to be held in Berlin. (Richardson, Messages and Papers, VI, 147.) A year later another message stated that Joseph A. Wright had attended "in accordance with a letter addressed by the Secretary of State, with my approval. . . . While it appears by the letter that no reimbursement of expenses or compensation was promised him, I submit whether reasonable allowance should not be made him for them." (*Ibid.*, 197; see

Seward to Wright, March 28, 1863, MS. Inst. Sp. Miss., III, 191-192. For other examples, see Serial 6179, Doc. 917, 5-6.) Frequently consuls attended international expositions and made reports. (See, for example, Serial 2877, 51 Cong. 2 Sess., H. Misc. Doc. 128, 693; For. Rel., 1897, 333-334.)

However, this sort of representation was not considered adequate. President Arthur complained of it in his fourth annual message, December 1, 1884. "During the past year the attention of Congress was drawn to the formal invitations . . . tendered by the Governments of England, Holland, Belgium, Germany, and Austria. The Executive has in some instances appointed honorary commissioners. This is, however, a most unsatisfactory expedient, for without some provision to meet the necessary working expenses of a commission it can effect little or nothing in behalf of exhibitors. . . . It seems to me that a statute giving to the Executive general discretionary authority to accept such invitations and to appoint honorary commissioners, without salary, and placing at the disposal of the Secretary of State a small fund for defraying their reasonable expenses, would be of great public utility." (Richardson, Messages and Papers, VIII, 240.) Later President Harrison made a similar request concerning international conferences, although he did not specifically mention expositions. Congress took no action, so McKinley again broached the subject in his second annual message, December 5, 1898. "Hardly a year passes that this Government is not invited to national participation at some important foreign center, but often on too short notice to permit recourse to Congress for the power and means to do so. My predecessors have suggested the advisability of providing by a general enactment and a standing appropriation for accepting such invitations and for representation of this country by a commission." (Ibid., X, 178.)

It remained necessary, however, for Roosevelt and Taft, in the case of every exposition, to ask Congress to make provision to enable the government to accept the invitation and participate in the exhibition. (Quito, 1909, Serial 5377, 60 Cong. 1 Sess., H. Doc. 487; Stat. at Large, XXXV, 380. Brussels, 1910, Serial 5407, 60 Cong. 2 Sess., Sen. Doc. 631; Serial 5384, 60 Cong. 2 Sess., H. Rpt. 2047; Serial 5571, 61 Cong. 1 Sess., Sen. Doc.



63; Serial 6179, Doc. 917, 6. Buenos Aires and Santiago, 1910, Stat. at Large, XXXVI, 203. Rome and Turin, 1911, Serial 5657, Sen. Doc. 321; Stat. at Large, XXXVI, 345.) There seems to be only one instance in which the executive has specifically referred to the law of March 4, 1913, in a message concerning an international exposition. President Wilson did so when he asked authority to accept the invitation from France to send an American delegate to a sea fishery exposition at Boulogne-sur-Mer in 1914, although no special appropriation was necessary. (Serial 6755, H. Doc. 894; Stat. at Large, XXXVIII, 778.) Congress has provided for participation in several expositions since that time. (Panama, 1916, Serial 6755, H. Doc. 840; Stat. at Large, XXXVIII, 1127; XXXIX, 15. Rio de Janeiro, 1922, *ibid.*, XLII, 209-210, 337. Seville, 1927, Cong. Record, 68 Cong. 1 Sess., LXV, 8081; Stat. at Large, XLIII, 1256-1258.)

There is no evidence that the executive has ever extended, without congressional authorization, an invitation to foreign nations to participate in an international exposition held in the United States. The statute providing for the centennial exposition at Philadelphia in 1876 authorized the President to make a proclamation which was sent to other countries. (Serial 1665, 44 Cong. 1 Sess., Sen. Misc. Doc. 5, 1.) The same procedure was followed regarding the New Orleans exposition in 1884 and 1885, the Chicago world's fair in 1893, the Louisiana purchase exposition at St. Louis in 1904, the Jamestown ter-centennial in 1907, and the Panama-Pacific exposition at San Francisco in 1915. (Richardson, Messages and Papers, VIII, 159; IX, 140; Stat. at Large, XXXII, 1986, 2011; XXXIV, 2997; XXXVII, 1726; XXXIX, 217.) When the executive was asked to invite foreign nations to participate in the Omaha exposition of 1898, Secretary of State Olney expressed the opinion that the act of Congress "contains no provision directing the President to issue a proclamation, and in the absence of such authority it is doubtful whether the President would feel inclined to adopt that course." However, diplomatic representatives were instructed to deliver invitations prepared by the exposition association. (Serial 3563, 55 Cong. 1 Sess., Sen. Doc. 179.) The provisions for government participation in American expositions have been similar to those in foreign ones. (Stat. at Large, XXIX, 382-384; XXXV, 388-



391; XLIII, 1253-1254. For a list of American expositions, see Serial 6179, Doc. 917, 7-16.)

#### NOTE F. ALLIED CONFERENCES AFTER THE GREAT WAR

When a conference met at Cannes in January, 1922, George Harvey, ambassador to Great Britain, was present as an observer but did not participate in the proceedings. (*New York Times*, Jan. 1, 8, 12, 1922; *Current History*, XV, 878-882.) Similarly Richard Washburn Child, ambassador to Italy, attended the Genoa economic conference in April and May after the United States had declined an invitation to participate. (*New York Times*, April 8, 10, 1922; *Current History*, XVI, 319; Levermore, *Third Year Book of the League of Nations*, 73.) America was invited to take part in The Hague conference to consider Russian economic rehabilitation, but declined. It was stated that no official observer would be sent, although Chargé Louis A. Sussdorf kept the State Department informed regarding developments at the conference. (*Ibid.*, 112; *New York Times*, May 15, 16, June 17, 18, 21, 1922. See above, 381, for an account of the important rôle played by American observers at the two Lausanne conferences.)

The problems concerning the cost of the army of occupation and the method of payment caused the United States to participate in several conferences. On October 1, 1921, it was announced that Allen and Boyden would attend a financial conference in Brussels. They, together with Colonel Ralph H. Hess, were present at the meetings held at the French foreign office October 18. (*New York Times*, Oct. 1, 12, 18, 1921; Allen, *Rhineland Occupation*, 249, 260.) The following spring Boyden, as observer, attended the meetings in Paris of the allied finance ministers, where reparation allotments were discussed. A little later he presided over a meeting of delegates from countries not participating in the allied conference. (*New York Times*, March 9, 11, 12, 15, 31, 1922; Levermore, *Third Year Book of the League of Nations*, 45, 67.)

In November, 1922, the allies asked that an American expert be sent to Paris to confer on the means of equal participation in German payments. Eliot Wadsworth, assistant Secretary of the Treasury, was made a delegate and arrived in France February 27, 1923. The discussions began March 1 and continued until

an agreement was signed May 25. This was never ratified. (*New York Times*, Nov. 10, 24, 25, 1922, Jan. 26, Feb. 28, March, April, May, *passim*, June 7, 1923; Toynbee, *Survey of International Affairs*, 1924, 275, n., 391, n.) At the reparation conference, which met in London during the summer of 1924, the United States had one accredited representative, Ambassador Frank B. Kellogg, who was assisted by Logan and four secretaries. Owen D. Young, Ambassador Houghton, Secretary Hughes, and Secretary Mellon were in London while the conference was in session. The Americans played an important part in the conference, although their powers were limited and they did not sign the resulting agreements. (*Ibid.*, 369, 380, 399; *Current History*, XX, 896-899, 1063-1069; *New York Times*, June 26, 27, July, Aug., 1924, *passim*.) In November Logan attended the Paris conference of experts, and he was one of the delegates to the meeting of finance ministers the following January. Ambassadors Herrick and Kellogg completed the American representation which signed the agreements arrived at by the conference. (*Ibid.*, Nov. 27, 1924, Jan., 1925, *passim*; Toynbee, *Survey of International Affairs*, 1924, 396, n., 399.)

#### NOTE G. CONFERENCES UNDER THE AUSPICES OF THE LEAGUE OF NATIONS

In June, 1921, an international conference on traffic in women and children was held at Geneva under the auspices of the League of Nations. The United States having signed the white slave conventions of 1904 and 1910, was invited to participate and was unofficially represented by Major Bascom Johnson, of the American Social Hygiene Association, who did not have the power to vote, although he was allowed to address the conference. (*New York Times*, June 27, 1921.) When the Council of the League created an advisory committee, Grace Abbott, chief of the children's bureau of the Department of Labor, was selected, "with the approval of the President, to co-operate in an unofficial and consultative capacity." (*Ibid.*, Oct. 20, 1922; *Handbook on the League of Nations, 1920-1923* (Boston, 1923), 298; *ibid.*, 1920-1924, 220-222.) An international hydrographic bureau was created as the result of a conference held at London in 1919. Even after the bureau was taken under the direction of the League of Nations in 1921 the United States government partici-

participated in its work and contributed to its support. Albert P. Niblack became a member of the directing committee. (Levermore, Third Year Book of the League of Nations, 65, 348; Handbook on the League of Nations, 1920-1924, 244-245.)

In 1921 the United States, as a member of the international office of public hygiene created in 1907, objected to any connection with the League of Nations, but by 1923 it was cooperating to some extent. In 1924 there were two Americans on the permanent health organization—Hugh S. Cumming and Alice Hamilton. The United States public health service was represented in a consultative capacity at conferences on serums held at London in 1921, at Geneva and Paris in 1922, and at Copenhagen in 1923. A member of the public health service also attended the sanitary conference held at Warsaw in 1922 under the auspices of the League. The United States has participated in the interchange of public health personnel in Europe, and meetings were held in this country during 1923 at the invitation of the public health service. (*New York Times*, April 11, 1922; Levermore, Third Year Book of the League of Nations, 347; Handbook on the League of Nations, 1920-1924, 200-206.)

When the international emigration committee set up by the international labor bureau held its first meeting at Geneva in 1921, it was announced at first that the United States would be represented by R. B. Mahany, of the Department of Labor, later that Robert Todd would attend, but both were withdrawn. The government did supply the commission with answers to a questionnaire. In February, 1922, Fred. C. Croxton was named by the commissioner general of immigration as American expert on an advisory committee. W. W. Husband assisted at the 1924 conference. (*New York Times*, April 6, 1924.) In October, 1922, the United States officially appointed Dr. Marion Dorset, of the Department of Agriculture, to serve as a member, in an unofficial and consultative capacity, of the anthrax committee created by the international labor bureau. (*Ibid.*, Oct. 11, 1922; Levermore, Third Year Book of the League of Nations, 347.)

The United States has played a leading rôle in the efforts to control the opium traffic. However, it did not accept the invitation from the League to appoint a representative to the permanent advisory committee, and for a time its only contact with international opium control was through the government of the

Netherlands. But in January, 1923, Dr. Rupert Blue was sent to the fourth session in an "unofficial and consultative capacity." Similarly, a few months later, Stephen G. Porter, chairman of the committee on foreign affairs of the House of Representatives, Bishop Charles H. Brent, Dr. R. Blue, and Mr. Edwin Neville, of the Department of State, attended the fifth session. This delegation returned to Geneva in September when the "American program" was adopted by the assembly of the League. Mr. Neville participated in the preparation of the program for the opium conference of 1924. "The United States is cooperating with the League's work in this field in a frank and open manner, though without adequate status." (*New York Times*, April 6, 1924, July 11, Sept. 12, 21, 1923; Handbook on the League of Nations, 1920-1924, 194-198.)

America did not participate in the first conference on communications and transit which met at Barcelona in 1921, but two years later Lewis W. Haskell, consul at Geneva, attended the second conference as observer. The United States had been similarly represented at the conference on customs formalities which met during the preceding month. At that time Mr. Haskell was assisted by four experts. (*Ibid.*, 207-211, 218-219; *New York Times*, Oct. 6., Nov. 22, 23, 1923, April 6, 1924.) When a conference on obscene publications was held at Geneva in the fall of 1923, the United States was represented in a "consultative capacity" by Alexander R. Magruder, chargé at Berne. During the same year Fred Dolbeare, of the American delegation to the Lausanne conference, and James A. Logan, unofficial representative on the reparation commission, assisted in the consideration of a loan to Greek refugees. (*Ibid.*; Handbook on the League of Nations, 1920-1924, 215.) Since 1924 the United States has taken part in the League attempts to formulate a plan for the reduction of armaments. Joseph C. Grew, minister to Switzerland, attended the meetings of a commission of the League at Geneva in February and a conference at Paris in March and presented the American viewpoint, although his instructions prevented him from participating fully in the work. (*Ibid.*, 148-152; *New York Times*, April 6, 1924. See also Handbook on the League of Nations, 1920-1924, 105-111; M. O. Hudson, "Many Americans Active in the League," *New York Times*, April 6, 1924, frequently referred to in this section.)

## CHAPTER X

### AGENTS TO COUNTRIES WHERE THE UNITED STATES HAD NO REGULAR DIPLOMATIC OFFICERS

All the men so far dealt with were sent to places where the United States had no regular diplomatic officers. That was the very purpose of sending agents to open diplomatic communications; the agent was the forerunner of the minister. In the cases of nations with which the United States had broken relations or was at war, a regular diplomatic officer would have been out of place. To send a regularly accredited diplomatic official to an unrecognized state or government would constitute recognition. The definition of a viceregal or colonial government makes it evident why special agents would be employed in dealing with them. So far as international conferences are concerned, they are in their very nature special and temporary and it is natural that the practice of employing special agents grew up. In most of the cases cited thus far there was some bar to the use of regular officers which made the employment of agents virtually necessary.

There have been many instances, however, in which the United States resorted to the use of special agents from choice, for beside the classes that have been

dealt with there have been a number of special agents sent to countries where the United States had no diplomatic representative and where it was not intended to have one at once. The reasons for the failure of the United States to maintain a regular officer have been various, but the chief one has been the desire to keep the diplomatic establishment as small as possible. Washington's policy of having as little political connection with Europe as possible, meant that the United States would send representatives only where its commercial interests were involved. That policy lived long after Washington. It was many years, for example, before the United States was regularly represented in Denmark. Charles W. F. Dumas, one of Franklin's agents during the Revolution, continued to represent the United States in the Netherlands until the first minister was appointed in 1792.<sup>1</sup> Therefore, when questions came up with nations where the matter of recognition was not involved, but where the United States had no representative, a special agency was often resorted to.

One group of agents of this class is composed of men sent to the Barbary powers. Thomas Barclay had

<sup>1</sup> Above, 5-7. Jefferson was of the opinion that Dumas ought not to be discontinued even after the appointment of Minister Short, because his "mission to Madrid will occasion an immediate vacancy at The Hague again; and because, by the time that will be over, his appointment at The Hague must be discontinued altogether, unless Congress shall enlarge the foreign fund." Jefferson to Washington, Feb. 4, 1792, MS. Misc. Letters; letters from Dumas, *ibid.*; instructions, MS. Inst. U. S. Mins., I, II; Dumas Papers, Library of Congress, Division of Manuscripts.



negotiated a treaty of peace with Morocco in 1787. But with the death of the emperor who made it, its value became very doubtful. On March 3, 1791, Congress appropriated twenty thousand dollars for "the purpose of effecting a recognition of the treaty."<sup>2</sup> The original negotiator, Barclay, was again despatched to Morocco. It was decided that "he should go without any defined character." But in conversation with Jefferson, Barclay made a suggestion which seemed to "render a small change expedient. . . . He observed that if his character was undefined, they would consider him as an ambassador, and expect proportional liberalities, and he thought it best to fix his character to that of consul, which was the lowest that could be employed." Consequently, Jefferson sent Washington a blank commission for a consul, and a draft of a new letter to the emperor, containing a credence.<sup>3</sup> Washington replied, April 1, "Referring to your judgment whether a commission, similar to that intended for Mr. Barclay, may be given without the agency of the Senate, I return both papers to you signed, in order that the one you deem most proper may be used."<sup>4</sup> Jefferson used the consular commission.

This occurred during a recess of the Senate, and it was intended that before the conclusion of the next session of the Senate Barclay should complete his

<sup>2</sup> Am. State Papers, For. Rel., I, 288.

<sup>3</sup> Jefferson to Washington, March 27, 1791, Washington Papers, XXI, 13-15.

<sup>4</sup> Washington Papers, XXI, 17-18.



task. Consequently, no nomination was deemed necessary.<sup>5</sup> However, Barclay did not complete his work before the close of the next session of the Senate, a fact which was known to Jefferson, yet no nomination was sent in. Indeed, Barclay remained in charge of the Moroccan business, and later of the negotiations with Algiers, to the day of his death, yet his name was never sent to the Senate in connection with this mission. Thus early was one of the official titles named in the Constitution conferred upon an executive agent to give him a diplomatic status, without the nomination to the Senate which the Constitution appeared to require.

His work was delayed and broken up because of a war concerning the succession to the throne, which was being waged on sufficiently even terms as to make the recognition of the treaty by any of the claimants of practically no value. This situation continued until after his death.<sup>6</sup> David Humphreys, minister to Portugal, was then instructed to keep himself informed of the progress of the civil war in Morocco, and as soon as he found the succession to the throne to be settled and stable, to send news, in order that a commissioner might be despatched promptly.<sup>7</sup> Meanwhile the recog-

<sup>5</sup> Sen. Ex. Jol., I, 34; instructions to Barclay, May 13, 1791, MS. Inst. U. S. Mins., I, 45; Am. State Papers, For. Rel., I, 288.

<sup>6</sup> Am. State Papers, For. Rel., I, 290, 293; despatches from Barclay, MS. Desp. Gibraltar, I; MS. Desp. Cadiz, I; for Humphreys' references to Barclay, see MS. Desp. Portugal, III.

<sup>7</sup> Jefferson to Humphreys, March 21, 1793, Am. State Papers, For. Rel., I, 294.

nition of the treaty was not important, as the rivalry for control within the country had destroyed the effectiveness of Moroccan naval power, leaving American shipping substantially immune from attack.<sup>8</sup> In due course Muley Soliman emerged victor in the war, and Humphreys was promptly appointed commissioner plenipotentiary, with power to use an agent if he deemed it wise to 'do so.'<sup>9</sup> Humphreys appointed James Simpson, American consul at Gibraltar, his agent in the business, and it was Simpson who actually negotiated the recognition of the treaty, in August, 1795.<sup>10</sup>

Humphreys, beside his mission to Portugal and his supervision of relations with Algiers and Morocco, had charge of making treaties with Tripoli and Tunis as well. "For want of more particular knowledge of Tunis and Tripoli," wrote Randolph, "you can only be informed generally, it is the instruction of the President, that treaties of peace should be concluded between the United States and each of those states," upon lines similar to those of the treaty with Morocco. Donaldson was to be Humphreys' agent, but "in case

<sup>8</sup> Dec. 14, 1793, Am. State Papers, For. Rel., I, 295.

<sup>9</sup> Randolph to Humphreys, March 28, 1795, MS. Inst. U. S. Mins., II, 335-340; Am. State Papers, For. Rel., I, 525; full power, *ibid.*

<sup>10</sup> Humphreys' full power to Simpson, May 21, 1795, Am. State Papers, For. Rel., I, 525-526; Simpson to Secretary of State, Aug. 18, Sept. 14, 1795, *ibid.*, 526-527; Pickering to Simpson, Nov. 6, 1795, MS. Inst. U. S. Mins., III, 80-81; Pickering to Humphreys, Nov. 23, 1795, *ibid.*, 87; other despatches from Simpson, June 22—Dec. 31, 1795, MS. Desp. Gibraltar, I.

of the death, sickness, or inability of the said Joseph Donaldson, Junior, you are authorized to appoint such agent for the purpose as you shall judge proper."<sup>11</sup> Humphreys substituted Joel Barlow<sup>12</sup> as his agent in place of Donaldson,<sup>13</sup> and it was Barlow, assisted by Captain O'Brien, who negotiated the treaty with Tripoli in November, 1796.<sup>14</sup> "Two sessions of Congress intervened, and three sessions of the Senate, between the appointment of the commissioner and the submission of the treaty to the Senate,"<sup>15</sup> but no nomination was sent to that body.

Humphreys, in like manner, selected Barlow to direct the negotiations with Tunis. Barlow, in turn, chose a deputy. At the suggestion of the French consul he selected Joseph Famin,<sup>16</sup> a French citizen, and associated with him Captain O'Brien. Both participated in the negotiation, but the treaty was con-

<sup>11</sup> March 28, 1795, MS. Inst. U. S. Mins., II, 335-340.

<sup>12</sup> Humphreys had despatched Barlow to Algiers in 1795. On his arrival in March, 1796, he attempted to preserve the treaty previously negotiated by Donaldson. Above, 389; see Pickering to Humphreys, June 18, 1796, MS. Inst. U. S. Mins., III, 186; Pickering to Barlow, Dec. 3, 1796, *ibid.*, 305.

<sup>13</sup> Feb. 10, 1796.

<sup>14</sup> Haswell, *Treaties*, 1083; Cong. Debates, 21 Cong. 2 Sess., VII, 255, 298; MS. Desp. Algiers, III; MS. Desp. Tripoli, I.

<sup>15</sup> Cong. Debates, 21 Cong. 2 Sess., VII, 298.

<sup>16</sup> Pickering to President, Jan. 6, 1797, Am. State Papers, For. Rel., I, 554; Humphreys' certificate, Nov. 14, 1797, *ibid.*, II, 123; appointment, May 22, 1796, MS. Desp. Algiers, II; correspondence between Barlow and Famin, *ibid.*

cluded by Famin in August, 1797.<sup>17</sup> Barlow's action in using a deputy was fully approved, and none of those concerned in the negotiation were nominated to the Senate.<sup>18</sup> However, the Senate refused to accept the fourteenth article of the treaty and desired changes in the eleventh and twelfth articles. Therefore, Richard O'Brien, William Eaton, and James L. Cathcart were commissioned, December 18, 1798, to negotiate the desired alterations.<sup>19</sup> In March, 1799, an agreement was signed by Eaton and Cathcart during the absence of O'Brien.<sup>20</sup>

After the treaty of peace with Algiers, negotiated by Decatur and Shaler in summary fashion in 1815, the difficulties with that power were not over. The word of the Algerine government was worth little. It sought by trickery to regain part of what had been lost, and committed "the gross and clumsy fraud of foisting into their copy of a treaty articles never agreed to."<sup>21</sup> It seemed desirable and even necessary, under the circumstances, to renegotiate the treaty of the previous year, and add certain explanatory clauses. Naval power was essential, so Isaac Chauncey, then

<sup>17</sup> Am. State Papers, For. Rel., II, 125.

<sup>18</sup> Pickering to Barlow, Dec. 3, 1796, MS. Inst. U. S. Mins., III, 308-309.

<sup>19</sup> MS. Credences, I; MS. Inst. U. S. Mins., V, 16-22, 70-72.

<sup>20</sup> Pickering to Cathcart, Jan. 11, 1800, MS. Inst. U. S. Mins., V, 277; MS. Desp. Tunis, I; MS. Desp. Tripoli, I.

<sup>21</sup> Adams to Monroe, March 4, 1817, J. Q. Adams, Writings, VI, 165.

in command of the Mediterranean squadron, was associated with William Shaler. These commissioners plenipotentiary were formally commissioned August 24, 1816, and completed their work December 23. They were never nominated to the Senate. Indeed, by an error due to the change of the staff of the Department of State incident to the change of administration, the treaty they signed was not submitted to the Senate until January, 1822.<sup>22</sup>

Practically all the cases cited have elements in common. The agents were sent to powers with which the United States was neither technically at war nor in a state of suspended relations, but with which the peace was scarcely more than a truce. All were sent to bolster the truce into the reality of peace so far as that might be possible in view of the character of the governments involved. These negotiations occurred before the establishment of regular permanent representatives, who could carry on relations in a somewhat more regular fashion.

Another group of executive agencies centers about the claims upon Denmark which grew out of the Napoleonic wars. As the commissioner who finally settled the cases with Henry Wheaton, the United States chargé, declared, "Denmark was drawn from its peaceful and upright policy. . . . Everything was changed, when his Danish Majesty was compelled, by circumstances, to join in a struggle, during which all

<sup>22</sup> Am. State Papers, For. Rel., V, 133-134; MS. Inst. U. S. Mins., VIII; MS. Desp. Algiers, IX.

the bonds which united nations for the maintenance of the general good were loosened.”<sup>23</sup> The upshot of this very diplomatic language is that Denmark, under stress of the struggle between Napoleon and Britain, abandoned neutrality in 1807 and thenceforth was for some years under Napoleon’s domination. When the American embargo laws expired and American trade abroad became active again, complaints of seizures by the Danes came very promptly. This situation found the United States with no regular channel of communication, for, in accord with the policy of having diplomatic representatives only where there was genuine necessity, no treaty had been made with Denmark and diplomatic officers had not been exchanged.

John Quincy Adams, when on his way to Russia in 1807, heard of Danish depredations upon American commerce, and on his own responsibility stopped in Denmark to voice a protest.<sup>24</sup> Matters were made very much worse, however, by revised instructions issued to the privateers and warships of Denmark, March 28, 1810.<sup>25</sup> It was sufficiently clear by this time that there would be work enough for a minister, and on December 12, of the same year, Madison sent to the Senate the nomination of “George W. Erving, of Massachusetts, to be charged as special minister to the Court of Denmark, with the subject of spoliations committed under the Danish flag on the commerce of

<sup>23</sup> Serial 221, H. Doc. 249.

<sup>24</sup> Moore, *Arbitrations*, V, 4550.

<sup>25</sup> Moore, *Digest*, VII, 496.



the United States.”<sup>26</sup> Erving arrived at Copenhagen in May, 1811, and remained until May of the year following.<sup>27</sup> He felt that his work had been relatively successful, for he wrote home “that our Government has afforded as effectual and complete protection to the commerce during the last year as it is possible for neutral commerce in these times to receive.”<sup>28</sup>

When Erving left Copenhagen, no new minister was sent. May 15, 1816, John M. Forbes, consul general since 1811, was appointed an agent to carry on such business as was possible for a person of equivocal status and limited powers.<sup>29</sup> His services as agent for claims were absolutely fruitless.<sup>30</sup> He was unable to induce the government even to examine the claims.<sup>31</sup> In addition to that matter, Forbes was charged, upon occasion, with other representations on the part of the United States.<sup>32</sup> For other matters involved in the relations of Denmark and the United States were not in a wholly satisfactory condition. Denmark maintained a “consul general and minister resident” in this

<sup>26</sup> Sen. Ex. Jol., II, 156.

<sup>27</sup> Moore, *Arbitrations*, V, 4552.

<sup>28</sup> Erving to Monroe, Feb. 12, 1812, *Am. State Papers, For. Rel.*, III, 564.

<sup>29</sup> “*Papers of James A. Bayard*,” II, 400.

<sup>30</sup> Clay to Wheaton, May 31, 1829, *MS. Inst. U. S. Mins.*, XI, 349.

<sup>31</sup> Serial 221, Doc. 249, 23.

<sup>32</sup> Adams to Campbell, June 28, 1818, *J. Q. Adams, Writings*, VI, 360-363; correspondence, *MS. Desp. to Consuls*, I, II; *MS. Consular Desp. Copenhagen*, II, III.



country, but he did not maintain a legation in Washington, seeming to regard his consular duties at Philadelphia as more important, and he was not regarded by the American government as being on the same footing as ministers from other countries. Denmark, on the other hand, felt that it was due that the United States should maintain an officer of equal rank at Copenhagen, and the Danish minister in London intimated as much to Minister Rush. This would involve a deviation from the "established policy of the country of keeping no government diplomatic missions at foreign courts except where the continuance of occasions for discussion of important topics of public interest render it indispensably necessary."<sup>33</sup>

Furthermore, trouble had arisen in the Danish West Indies. The American consul at St. Thomas, Robert M. Harrison, came into collision with the governor general, against whom he preferred charges of illegal treatment of an American seaman, which became a subject of representation to the Danish government through Forbes. The governor general, in turn, made complaints against Harrison, and at the request of the Danish minister he was recalled. The Danish government, not knowing of Harrison's recall, apparently determined to compel it by refusing to admit any American consul at St. Thomas, though allowing the consul at St. Croix to maintain a deputy on the other island. The inconvenience was considerable. "St. Croix is a place not much frequented by American

<sup>33</sup>Id. to id., loc. cit.

vessels, while St. Thomas is constantly crowded with them." It was desirable that the Danish government be brought to reconsider its decision. Such were the circumstances when George W. Campbell was preparing to go out as minister to Russia. He was directed to stop over two or three days at Copenhagen, and on the strength of "an informal letter of introduction" to Rosencrantz, the foreign minister, set out to him the American point of view on these two topics. In addition, if the matter of claims should be drawn into the conversation, Campbell was to "give him distinctly to understand that they have not been, and will not be abandoned by this government."<sup>34</sup>

The next agency to Denmark was of a similar transient kind. When, in 1825, Christopher Hughes was recalled from Sweden and made chargé to the Netherlands, he was directed to call at Copenhagen on his way to the United States for a visit before setting out for his new post. Since the government had ceased to press the matter, interested parties had sent a private agent of their own, John Connell, of Philadelphia, to support their claims before the Danish government. The purpose of Hughes' visit was to render any aid possible to Connell, to reiterate the interest of the American government in the settlement of the claims, and to sound out the Danish government in order to discover whether the moment was propi-

<sup>34</sup> Adams to Campbell, loc. cit.; MS. Inst. U. S. Mins., VIII, 215-217; despatches, Sept. 2, 15, 1818, MS. Desp. Russia, VII; Clay to Wheaton, loc. cit.

tious for a more formal and energetic presentation of the American point of view than was possible in a hasty visit. Further, he was to renew the request, previously made by Campbell, that an American consul be admitted to St. Thomas, and to repeat the explanations which led the United States to decline to send a permanent representative.<sup>35</sup> On April 26, 1826, a treaty of friendship, commerce, and navigation between Denmark and the United States was signed by the Danish minister resident and Secretary of State Clay. Before signing, notes were exchanged to the effect that claims of American citizens were not abandoned, although not provided for in the treaty. John Rainals, consul at Copenhagen, was appointed special agent to exchange ratifications.<sup>36</sup>

Another mission of a character almost precisely like that of Christopher Hughes occurred in the same year. It was the mission of John James Appleton to Naples. Like the Hughes mission, it related to claims growing out of the Napoleonic wars. Like the Hughes mission, it was preceded by and followed by a regular mission, but was itself a special agency. As Erving had been

<sup>35</sup> Clay to Hughes, March 24, 1825, two letters, MS. Inst. U. S. Mins., X, 247, 249; MS. Credences, II, 6; despatches, Aug. 1, 6, 19, 1825, MS. Desp. Sweden, IV; Clay to Wheaton, loc. cit.; Adams to Levy, agent for commerce and seamen at St. Thomas, MS. Desp. to Consuls, II, 350, 351; Serial 221, Doc. 249, 23-24; Moore, Arbitrations, V, 4552; Haswell, Treaties, 1286.

<sup>36</sup> Am. State Papers, For. Rel., V, 905-907; credence, May 18, 1826, MS. Credences, II, 49; instructions, May 19, Oct. 31, 1826, MS. Inst. U. S. Mins., XI, 75, 173; despatches, July 24, 29, Aug. 15, 22, 1826, MS. Consular Desp. Copenhagen, III.

sent as a special minister to Denmark, William Pinkney was sent to Naples. There was this difference: Erving went in 1812; Pinkney was not sent until 1816, the reason being "the disordered state of that country for several years past."<sup>37</sup> The claim against Naples was considerably stronger than that against Denmark, being based upon a perfidious seizure of American vessels quite beyond possibility of justification.<sup>38</sup> Nevertheless, Pinkney's mission was a flat failure, the legitimist government declining to accept responsibility for the wrongs done by Murat, who was king during the later part of the Napoleonic régime when the seizures occurred.<sup>39</sup> Eight or nine years later a consular representative, Alexander Hammett, informed the Department of State that he had reason to believe a better disposition to render justice to the claimants prevailed in the government of Naples. It was determined to take advantage of this supposed change of heart, but not to be drawn into a formal mission, where, after a polite and sympathetic reception, a cold and categorical refusal might follow, as had been the case with the Pinkney mission.

Instead, Appleton was to go as an agent, with "an informal letter of introduction to the Minister of Foreign Affairs," and instructed "to ascertain, by such

<sup>37</sup> Monroe to Pinkney, May 11, 1816, Am. State Papers, For. Rel., IV, 161; Sen. Ex. Jol., III, 32, 35, 45, 46.

<sup>38</sup> Pinkney to the Marquis di Circello, minister of foreign affairs, Aug. 24, 1816, Am. State Papers, For. Rel., IV, 162.

<sup>39</sup> Am. State Papers, For. Rel., IV, 160-171.

means as may appear to you best calculated to elicit, the present temper and disposition of that government in respect to those claims." He was to make it perfectly clear to the Neapolitan government "that the United States still hold it responsible for the injuries inflicted upon their citizens, . . . that this responsibility, far from weakening, acquires, in the view of the President, augmented strength, by the lapse of time, and that it never will be considered as cancelled, until full indemnity is made." In case Appleton was persuaded that a genuine spirit of accommodation existed, which promised a favorable outcome to negotiations, "a commission will be sent you as chargé d'affaires, to agree upon a convention for that object."<sup>40</sup> At first he found the secretary of foreign affairs ready to discuss confidentially the matter of claims, but this attitude soon changed to insistence on the irresponsibility of the king for the acts of Murat. Appleton attributed the change to the discovery that the extent of his powers rendered the fear of reprisals groundless and that claims of the United States against France were still unacknowledged.<sup>41</sup>

With Austria the United States was in no haste to open relations. There was very little intercourse

<sup>40</sup> Clay to Appleton, May 12, 1825, MS. Inst. U. S. Mins., X, 352-355; extract, Serial 230, 22 Cong. 2 Sess., Sen. Doc. 70, 6-7.

<sup>41</sup> Despatches from Appleton, Feb. 14, Aug. 7, 30, Nov. 5, 1826, MS. Desp. Naples and Sweden, V; Serial 230, Doc. 70, 10-21; termination of mission, June 8, 1826, MS. Inst. U. S. Mins., XI, 81.

between the two countries, and it was not until 1829 that a treaty of commerce and navigation was negotiated.<sup>42</sup> Even after that treaty was ratified, in 1831, no diplomatic officers were exchanged, under the principle that missions would be maintained only where they would be actively employed most of the time. There was only one American consul in Austria,<sup>43</sup> who reported about once a year on political as well as commercial events. In the eight years after the signing of the treaty there does not appear to have been a single diplomatic episode of any importance between the two countries.<sup>44</sup> The trade, even, was small, and the great American staples—cotton, tobacco, rice, and whale oil—were not imported in large amounts, the Austrians preferring, for instance, Egyptian to American cotton.<sup>45</sup> The greatest opportunity existed for tobacco, and the consul made repeated reports on the possibilities.<sup>46</sup>

Meanwhile there was some talk of diplomatic representation on the part of Austria in 1831, and on the part of the United States in 1836,<sup>47</sup> but in neither case did results follow. It was not until the next year, when the United States took up in a vigorous way the

<sup>42</sup> Haswell, *Treaties*, 23.

<sup>43</sup> He was irregularly appointed, apparently by accident. Serial 578, 31 Cong. 1 Sess., H. Ex. Doc. 71, 1-3.

<sup>44</sup> *Ibid.*, *passim*; and see Hasse, *Index*, I, 78.

<sup>45</sup> Serial 578, Doc. 71, 12, 16, 36.

<sup>46</sup> *Ibid.*, 21, 27.

<sup>47</sup> *Ibid.*, 8, 38.



extension of the market for American tobacco, that an agent was sent.<sup>48</sup> Nathaniel Niles was selected. His instructions show perfectly the motive behind his appointment. The purpose was "to procure the abolition or modification of the heavy duties and restrictions by which the tobacco trade of this country with" Austria had been burdened.<sup>49</sup> On the basis of these instructions Niles spent over a year in collecting information and in negotiating on behalf of the United States, continuing his mission until the arrival of Henry A. Muhlenburg as minister.<sup>50</sup>

The next occasion for sending an agent to a country where there was no regular representative was of a wholly different nature. John L. Stephens was sent to close a legation. Central America had been recognized in 1824<sup>51</sup> and the United States promptly sent a chargé. The mission was maintained fairly consis-

<sup>48</sup> For the scope of this effort, see Hasse, Index, III, 1646-1650. The House of Representatives had a select committee on the subject, and to promote the tobacco trade provision was made in the civil and diplomatic bill of 1837 for a minister to Austria and to Prussia. Cong. Debates, 24 Cong. 2 Sess., XIII, 2060, and App., 19. The important influence of the report of the select committee is evidenced in Forsyth to Muhlenburg, minister to Austria, April 20, 1838, MS. Inst. Austria, I, 12-16.

<sup>49</sup> Forsyth to Niles, June 7, 1837, MS. Inst. Austria, I, 1-4; MS. Credences, II, 277.

<sup>50</sup> Id. to id., April 10, 1838, MS. Inst. Austria, I, 10; Niles's reports, MS. Desp. Austria, I; part were printed in Serial 398, Doc. 246, and Serial 368, 26 Cong. 1 Sess., H. Doc. 229; see also manuscript papers, Library of Congress.

<sup>51</sup> Serial 3469, Sen. Doc. 40, 4; Moore, Digest, I, 92.



tently; but the Central American government failed to reciprocate, save for short periods. The reason for that situation was plain. The United States was interested in a canal, and, consequently, wished to keep in contact with the confederation. Central America, on the other hand, was constantly torn with internal dissension to such an extent as to render the state incapable of consistent representation at Washington. When the disorder reached a stage so complete that the American legation could no longer do business with any effectiveness, it was decided to withdraw it until a more convenient season. De Witt, the chargé, was permitted to return to the United States for a visit, in the expectation that he would return to wind up the affairs of his mission. But while in the United States he died.

It was not worth while to appoint another chargé simply to close the legation, and a special agency was therefore resorted to. The first appointee, William Leggett, died while preparing for the journey, and John L. Stephens was substituted, June 3, 1839.<sup>52</sup> Stephens was to secure the archives, and then seek an interview with the minister of foreign affairs to make explanations with regard to the withdrawal of the legation, thereby removing "every unfavorable impression," and persuading "him that in adopting the step the President has been actuated solely by views of

<sup>52</sup> Forsyth to Leggett, May 16, 1839, MS. Inst. U. S. Mins. Am. States, XV, 32; Forsyth to Stephens, June 3, 1839, *ibid.*, 32-33; Vail, acting, to Stephens, Aug. 13, 1839, *ibid.*, 33-38.

expediency, unmixed with any feeling of unkindness towards Central America, and you may add that he will hasten to manifest the friendly disposition of the United States towards her by as early a resumption of diplomatic intercourse as circumstances, which he hopes will soon prove more favorable, will admit."<sup>53</sup>

There was another matter of some importance which needed clearing up before American representation was wholly withdrawn. In June, 1838, a treaty had been negotiated by De Witt renewing the treaty made in 1825, the duration of which, in respect to the clauses dealing with navigation and commerce, had been limited to twelve years.<sup>54</sup> It contained the foolish provision that ratifications were to be exchanged at Washington within eight months. That all too short period did not allow its transmission to the United States and submission to the Senate in time to have it approved and ratifications exchanged. It was intended that De Witt should remain and bring the Central American ratification with him. Because that ratification was so long postponed that the eight months would expire before he could reach Washington or because of his ill health, De Witt returned before Central America ratified the treaty. He died almost immediately upon reaching this country, so that the Department of State had no information as to the

<sup>53</sup> Vail to Stephens, loc. cit.

<sup>54</sup> Haswell, *Treaties*, 129. The treaty expired Aug. 2, 1838. *Ibid.*, 1233.

cause of failure.<sup>55</sup> As matters stood, the treaty was dead. Stephens was instructed to sound the minister of foreign affairs and discover whether the government of the confederation would be willing to extend the time of ratification. If a willingness developed, Van Buren was ready to request the Senate to approve the exchange notwithstanding the expiration of the time limit.

Claims upon the countries of Latin America were never ending. Though there were, in general, fewer cases of molestation and damage to interests of United States citizens in Central America than elsewhere,<sup>56</sup> claims, nevertheless, entered into Stephens' mission. There was no hope of collecting any money, because of the distracted condition of the country, but it was desired to make perfectly clear that the demand was only suspended, and that it would be renewed as soon as conditions warranted, "and it is expected that the motives of delicacy and forbearance which induce the course pursued towards Central America in her hour of adversity will be taken into account when she shall be better able to dispense justice where it is due."<sup>57</sup> Stephens was unable to fulfil any of the purposes of his mission, save only the recovery of the archives. When he arrived in Central America the country was

<sup>55</sup> Webster to Murphy, July 28, 1841, MS. Inst. U. S. Mins. Am. States, XV, 41-47.

<sup>56</sup> *Id.* to *id.*, loc. cit.

<sup>57</sup> Vail to Stephens, loc. cit.; Richardson, Messages and Papers, III, 533.

so torn by civil war that there was virtually no government. The confederation was, indeed, in dissolution and it was hopeless to attempt dealings with it.<sup>58</sup> Matters rested in this condition until Van Buren went out of office and Harrison became President.

Rumor, meanwhile, indicated the possibility that events of something like decisive importance had transpired—that “a Confederation of some kind and to some extent, if not comprising all the provinces of which the Central American Confederation was composed, has been formed in that country. Both the uncertainty and the probability of this make it highly desirable” that the department should have exact information. Therefore, the first object of the new agency, in 1841, was information. The agent, William S. Murphy, was not expected to explain the withdrawal of the American legation. Secretary of State Webster felt that, in view of events, to do so would be to elaborate the obvious. But if he was able to find a government of sufficient authority to make it worth while, he was to make an effort to devise plans for the revival and ultimate ratification of the De Witt treaty. “For although navigation and trade between the United States and some countries may be regulated with advantage to us by reciprocal legislation only, treaties for that purpose are thought to be particularly

<sup>58</sup> Instructions, MS. Inst. U. S. Mins. Am. States, XV, 41-47; credence, MS. Credences, II; nine despatches from Stephens, June 7, 1839—Aug. 7, 1840, MS. Desp. Central America, II.

necessary and desirable with the mutable governments of the Spanish American States." <sup>59</sup>

Before Murphy was able to set out on his mission another duty was added. Great Britain had a foothold in Belize long before Spain lost power in America, and after new states replaced the mother country Britain carefully buttressed her possession with a series of treaties and declarations.<sup>60</sup> That foothold was expanded by a process of aggression sufficiently gradual not to arouse the hostility of the United States despite the special interest of the latter in a canal. But this process of aggression, and a policy of meddling in the internal affairs of the Central American confederation for the purpose of weakening or disrupting it,<sup>61</sup> led to an appeal to the United States." In 1835, the United States was asked to use its good offices with Great Britain. The contention of the confederation was that the privilege ceded to England by Spain was simply that of cutting dyewoods, and that Spain had never contemplated allowing a settlement to grow up and become a colony of Great Britain. Not content with this transformation, the British had trespassed beyond the area allowed them. The bearer of the appeal was Colonel Galindo,<sup>62</sup> an Irishman who had settled in Central America. His mission was a

<sup>59</sup> Webster to Murphy, loc. cit.; credence, MS. Credences II.

<sup>60</sup> Williams, *Anglo-American Isthmian Diplomacy*, 31-33.

<sup>61</sup> *Ibid.*

<sup>62</sup> Webster to Murphy, Aug. 6, 1841, MS. Inst. U. S. Mins. Am. States, XV, 48-50.

failure<sup>63</sup> due to the influence of the British minister, Vaughn, who had no trouble in persuading Forsyth to a policy of hands off.<sup>64</sup> Galindo then went to England to negotiate, if possible, an accommodation.

So little was the United States interested that no report on the subject was made by the minister in London, and when Webster took office, beyond the fact that Galindo had failed, nothing was known about the causes of his failure or the condition in which the controversy then stood. Webster seems to have been inclined to be somewhat more aggressive than Forsyth, but he moved with the utmost caution and avoided committing himself, emphasizing to Murphy that he "must not let it be supposed that this Government takes any more interest in the matter now than it did at the time of the visit of Colonel Galindo to Washington, or that it is inclined to deviate from the course which was pursued upon that occasion."<sup>65</sup> This was the only portion of his mission which Murphy was able to accomplish. His reports were filled with data new to the department,<sup>66</sup> but nothing was done.

When the United States recognized Ecuador, by the mission of James C. Pickett, it was not intended to

<sup>63</sup> Id. to id., Aug. 6, 1841, loc. cit.

<sup>64</sup> Williams, *Anglo-American Isthmian Diplomacy*, 34.

<sup>65</sup> Webster to Murphy, Aug. 6, 1841, loc. cit.

<sup>66</sup> Id. to id., June 17, 1842, MS. Inst. U. S. Mins. Am. States, XV, 50-51; thirteen despatches from Murphy, Aug. 28, 1841—Nov. 10, 1842, MS. Desp. Central America, II; Williams, *Anglo-American Isthmian Diplomacy*, 45, n. 98; Moore, *Digest*, III, 158.



open a legation immediately. The purpose was simply to extend recognition and to secure the benefits which Webster so accurately described in his instructions to Murphy when he was despatched to Central America. After Pickett signed the treaty, June 13, 1839, he repaired to his post as chargé to the Peru-Bolivian Confederation. When, therefore, the Senate had approved the treaty, the problem of exchanging ratifications in Quito remained to be specially provided for. Benjamin Tappan, Jr., was selected for that task. His mission was not expected to be an affair of mere routine or ceremonial. He was to reach Ecuador before the meeting of the congress of that state, which must consent to the ratification, and he was directed to make use of his time "to remove any impediments which may arise to the passage of the instrument through that body."<sup>67</sup>

Tappan's mission was not without danger. The mortality among American agents to Latin America was high and Forsyth wanted to take as few chances as possible. Three days after Tappan was instructed, Seth Sweetser, American consul at Guayaquil, was appointed a special agent and instructed that in case of the death or illness of Tappan he was to get the papers and fulfil the mission.<sup>68</sup> That was what actually

<sup>67</sup> Forsyth to Tappan, Sept. 16, 1840, MS. Inst. Sp. Miss., I, 171; further instructions, Sept. 26, 1840, *ibid.*; power, MS. Credences, I.

<sup>68</sup> Forsyth to Sweetser, Sept. 19, 1840, MS. Special Agent Bundle; further instructions, Sept. 26, 1840, MS. Inst. Sp. Miss., I; credence, MS. Credences, II.



happened. Tappan reached Quito safely, but found conditions so unsettled that it was impossible to get a quorum of congress together.<sup>69</sup> The administration was divided and matters moved slowly, there being every indication that it would take at least a year to secure the ratification. The illness which Forsyth had foreseen as a possibility became an actuality, so Tappan left his papers with Sweetser and headed for a more healthful climate.<sup>70</sup> Sweetser exchanged the ratifications April 9, 1842.<sup>71</sup>

Beside the matter of the treaty, there was another item of business committed to Pickett which devolved upon Tappan. The United States had certain claims against Colombia. When that republic was dismembered (1829 to 1831), the three republics,—New Granada, Venezuela, and Ecuador,—which succeeded it, agreed, by a treaty of December 23, 1834, upon a partition of the liabilities of the former state.<sup>72</sup> The United States had previously agreed, by a convention of November 25, 1829, upon a settlement of two claims,—those of the *Josephine* and the *Ranger*,—but now had to seek the proper proportion from each of the three governments. Though the United States had not at

<sup>69</sup> Tappan to Forsyth, Feb. 5, 1841, MS. Special Agent Bundle.

<sup>70</sup> Tappan to Webster, Dec. 6, 1841, MS. Special Agent Bundle; Sweetser to Tappan, July 29, 1841, *ibid.*; Tappan to Sweetser, Aug. 8, 1841, *ibid.*; Sweetser to Tappan, Aug. 12, 1841, *ibid.*

<sup>71</sup> Serial 418, 27 Cong. 3 Sess., H. Doc. 2, 156; Serial 446, Rpt. 484, 16; Sweetser's despatches, May 15, 1841—Sept. 20, 1842, MS. Consular Letters, Guayaquil, I.

<sup>72</sup> Moore, Digest, V, 559.

the time recognized Ecuador, and was not represented at Quito, Robert McAfee, chargé at Bogota, entered into correspondence with the government of Ecuador, and laid down the principle that the United States "considered the several states which constituted the Republic of Colombia as jointly and severally liable for the claims of citizens of the United States, but that we would release any one of those states from further liability on account of the claims upon the payment of its share agreeable to the treaty between the States." To this proposition the reply was made that the Ecuadorian minister to Bogota would be instructed to discuss matters. But that diplomatic officer delayed in coming. Forsyth, therefore, sent instructions to McAfee to go to Quito and reach a settlement. The instructions, however, never arrived, for the vessel on which the messenger sailed was burnt at sea.<sup>73</sup>

When Pickett went out to recognize and treat with Ecuador, he was instructed also to press for the twenty-one and a half per cent which was Ecuador's share. The government agreed to pay as soon as it received information on certain matters which Pickett could furnish. For some unexplained reason he did not produce the information, and so the matter hung fire. Tappan, consequently, was to broach this matter as soon as the ratification of the treaty was disposed of, but not until then. By this time both Venezuela and New Granada had paid in full their shares on

<sup>73</sup> Calhoun to Smith, Jan. 7, 1845, MS. Inst. Sp. Miss., I, 202-209.

these two claims.<sup>74</sup> Inasmuch as Tappan did not secure the ratification, he was not at liberty to open this discussion.

After the treaty was ratified it was still felt that the amount of diplomatic business did not "warrant either the establishment, on our part, of a formal mission at Quito, or the employment there of a formal diplomatic agent of any grade."<sup>75</sup> But there was still the matter of claims to be dealt with. Ecuador was the only country which had not paid in the *Josephine* and *Ranger* cases; and on other cases not included in the agreement made in 1829, Venezuela in particular, and New Granada to a less degree, were showing a disposition to render justice. The total claims on the old Republic of Colombia amounted to \$1,250,000, of which Ecuador's share was \$268,750. Early in 1845 Secretary of State Calhoun instructed Delazon Smith to make a treaty by which Ecuador would agree to pay in installments a quarter of a million dollars, leaving to the United States the equitable distribution of the money among the claimants. If Ecuador refused to sign such a treaty, Smith was to insist upon the prompt payment of the amount due on the *Josephine* and *Ranger* cases, at least.<sup>76</sup>

Before Smith set out for Quito the department received word from Sweetser that he was going there to settle the claims in the *Josephine* and *Ranger* cases.

<sup>74</sup> Forsyth to Tappan, Sept. 16, 1840, loc. cit.

<sup>75</sup> Calhoun to Smith, loc. cit.

<sup>76</sup> Id. to id., loc. cit.; credence, MS. Credences, III.

"By what authority he has thus undertaken to act, the Department is unable to ascertain,"<sup>77</sup> wrote Calhoun. The source of his authority does not appear to be very mysterious. He had been authorized, in case Tappan died or was ill, "to perform the trust committed to Mr. Tappan." It is true that a later clause appeared to define the "trust" simply as the exchange of ratification,<sup>78</sup> but when Tappan left, he deposited with Sweetser not only the "tin box, said to contain the treaty," but also the "documents relating to the claims," and both seemed to think all the duties assigned to Tappan devolved upon Sweetser.<sup>79</sup>

In any event, the unexpected move on Sweetser's part led to a modification of Smith's instructions, by which he was directed to confer with Sweetser and be governed by what Sweetser had accomplished.<sup>80</sup> His trip was a bitter disappointment, for he found the country so disrupted by revolution that he felt he would more "wisely consult the interests of my government and its citizens,—creditors of this,—by returning immediately to the United States than by remaining here for an indefinite number of months in waiting upon an ignorant, a selfish, a penniless and a rebellious people for the foundation of a government which I can properly address;—a people where presumption displays

<sup>77</sup> Calhoun to Smith, *loc. cit.*

<sup>78</sup> Forsyth to Sweetser, Sept. 19, 1840, *loc. cit.*

<sup>79</sup> Sweetser to Tappan, Aug. 12, 1841, *loc. cit.*; Tappan to Sweetser, Aug. 8, 1841, *loc. cit.*

<sup>80</sup> Calhoun to Smith, *loc. cit.*

a constant burlesque upon the very name of republican, and a government which day by day belies the labels upon its text books, for at the present time there is neither legitimate government or money adequate for the day's wants in the republic of Ecuador." <sup>81</sup>

With the German states, aside from Prussia, the United States did not maintain regular diplomatic intercourse. Thus, when the first treaty with Hanover was negotiated in 1840, it was done by Henry Wheaton, minister to Prussia. The treaty provided for "perfect freedom and reciprocity in the direct trade between the two countries." Within a few years Hanover sought a new treaty which would put the indirect trade on the same unrestricted footing. This was a measure which would work to the advantage of Hanover. It would give Hanoverian vessels the privilege of carrying products from all the countries of the world to a nation of twenty millions, while American vessels would gain the privilege of a trade to only two and a quarter millions of people. This point was a valuable one for the United States in insisting upon some compensating advantage, though it was more theoretical than practical, because Hanover had a very small merchant marine, and could use only such ships in the trade as were built either in Hanover or the United States, which reduced the number still more. Inasmuch as Hanover lacked shipbuilding facilities, the shipbuilding industry of the United States was fairly certain to gain whatever the carrying trade lost. Other

<sup>81</sup> Smith to Calhoun, Aug. 10, 1845, MS. Special Agent Bundle.

changes desired by Hanover were the inclusion in the treaty of the Grand Duchy of Oldenburg, which was in a commercial league with Hanover, and provision for the adherence of Mecklenburg Schwerin and Mecklenburg Strelitz. There was no objection on the part of the United States to the inclusion of these states.

The United States, moreover, was not unwilling to see the treaty revised, for there were certain alterations which were desirable from the point of view of this country. In the first place, the transit tolls charged upon American goods passing through Hanover into the heart of Germany were a serious bar to American commerce. They constituted, for example, one of the chief obstacles to the triumph of American over Egyptian cotton. Other important products adversely affected were tobacco, rice, and whale oil. These duties, like the sound dues and river tolls, were relics of a bygone age and the United States was interested in breaking them down. So important was the interest in this case that the abolition or material reduction of the transit dues by Hanover was made a condition to the negotiation of a treaty.

The second point in which the United States was very much interested was the tobacco duty. For a number of years an intensive effort had been made to extend the market for American tobacco. In many countries the negotiation had to do with a tobacco monopoly operated by the government. In the case of Hanover the problem was one of import duties. Hanover charged a duty of sixty-nine cents a hundred



pounds; the Zollverein charged three dollars and thirty-three cents on the same amount. The United States feared that Hanover might join the Zollverein, and by so doing affect adversely the consumption of American tobacco which was large in Hanover—an average of three and a third pounds per capita,—but which was small in the Zollverein area—an average of less than a pound per capita. Polk and Buchanan desired an agreement on the part of Hanover not to increase the rate on tobacco. That was the form in which the wish was expressed that Hanover should not join the Zollverein. The policy of that union was becoming more and more restrictive. If Hanover joined, it would carry Oldenburg in its train, and might draw in the Hanse towns as well. Any treaty stipulation which would make it more difficult for Hanover to join would be welcome. This was also the wish of the King of Hanover, who was old and infirm, and nervous about what his successor might do.<sup>82</sup>

To undertake the task of redrafting the treaty, A. Dudley Mann was selected. The choice was a good one. He was a Virginian, born in 1801. He had been consul at Bremen from 1842 to 1845,<sup>83</sup> and was thoroughly familiar with American commercial problems in relation to European tariffs, tolls, and monopolies. To these qualities he added a great deal of enthusiasm and energy, as well as tact and address. If he put an

<sup>82</sup> Buchanan to Mann, March 27, 1846, MS. Inst. Sp. Miss., I, 239-245.

<sup>83</sup> Hasse, Index, III, 1726.



exaggerated value on the work which he was asked to do, he did no more than Congress and the Department of State, for the negotiations were expected to bring very large commercial results.<sup>84</sup> Mann set about his work promptly after receiving his instructions, which were dated March 27, 1846.<sup>85</sup> On June 17, he transmitted a treaty which was received in Washington July 6.<sup>86</sup> The treaty was not strictly in accord with his instructions, but the President approved it and sent it to the Senate the day after its arrival. There it hung fire. Some Senators objected to admitting any European country to the indirect trade. Others objected to a clause which authorized Hanover to change the duty on tobacco after a year's notice,—and this in spite of the fact that the United States would make no stipulations of any kind limiting its perfect freedom to increase the duties on goods from Hanover. The treaty had been drafted to continue in force for twelve years, and thereafter until the expiration of a period of twelve months after notice by one of the parties. To allay criticism in the Senate it was decided by the administration to alter the treaty to make its termination at the end of twelve years automatic.

In view of this situation it was necessary to instruct Mann to return to Hanover, make what explanation of the delay was possible, assure the king that the

<sup>84</sup> Haswell, *Treaties*, 1342.

<sup>85</sup> Buchanan to Mann, *loc. cit.*; power and credence, MS. *Credences*, III, 179, 180.

<sup>86</sup> Mann to Buchanan, No. 4, MS. *Desp. Mann*.

treaty would in due course be accepted by the Senate, and secure his assent to the modification as to duration.<sup>87</sup> When the ratification had been completed, he was authorized to make the exchange.<sup>88</sup> From Hanover Mann was to proceed to Oldenburg. It had been intended that the duchy should be a party to the treaty, and its interests were considered during the negotiation. There had seemed to be no doubt that its adhesion would be a mere formality, and that it would be ready to become a party immediately after the exchange of ratifications with Hanover was effected.<sup>89</sup> But at the last moment Oldenburg desired some changes. The changes were not in themselves vital, but they would have had the effect of throwing the whole matter back into the Senate, where opposition to reciprocity in the indirect trade was growing. For that reason it was necessary to persuade Oldenburg to accept it as it stood.<sup>90</sup> The two Mecklenburgs were desired also as parties to the treaty, but the case of these states was somewhat different. Their relations with Prussia were sufficiently intimate so that an attempt to negotiate with them concurrently with Hanover would have led to the disclosure of the whole business to Berlin, and would have roused influences decidedly inimical to a

<sup>87</sup> Buchanan to Mann, No. 2, Aug. 12, 1846, MS. Inst. Sp. Miss., I, 245-247.

<sup>88</sup> Id. to id., No. 3, Jan. 9, 1847, MS. Inst. Sp. Miss., I, 248-254; power, MS. Credences, III, 189, 190.

<sup>89</sup> Mann to Buchanan, No. 4, loc. cit.

<sup>90</sup> Buchanan to Mann, No. 3, loc. cit.

successful termination of the mission.<sup>91</sup> It was necessary, therefore, to persuade them to accept without change an instrument in the negotiation of which they had not only played no part but which had been held confidential from them. Mann succeeded in securing the adhesion of Oldenburg and of Mecklenburg Schwerin.<sup>92</sup>

One of Mann's characteristics was fertility of suggestion. His despatches were never confined solely to the business in hand. Copious and detailed in their explanation of the immediate negotiation, they overflowed with ideas as to the proper policy to supplement and develop the idea involved in the work upon which he was engaged. His despatches, as Buchanan said, were "replete with information—historical, political, statistical, commercial and agricultural—of a highly important character."<sup>93</sup> His reputation along this line was so well established that when Clayton succeeded Buchanan as Secretary of State he sought from

<sup>91</sup> Mann to Buchanan, No. 4, loc. cit.; Buchanan to Mann, June 26, 1847, MS. Inst. Dip. Agents, etc., Germany, etc., I bis, 1-9.

<sup>92</sup> Haswell, *Treaties*, 792-793, 653-658; Mann to Buchanan, No. 6, Oct. 28, 1847, MS. Desp. Mann; id. to id., Oct. 28, Nov. 18, 1847, private, *ibid.*; id. to id., No. 7, Dec. 7, 1847, transmitting accession of Mecklenburg Schwerin, *ibid.*; Buchanan to Mann, May 29, 1848, notifying of ratification of accession by Senate, MS. Inst. Dip. Agents, etc., Germany, etc., I bis, 14-16; Mann to Buchanan, No. 25, June 10, 1848, MS. Desp. Mann; id. to id., No. 26, exchange of ratifications with Mecklenburg Schwerin, *ibid.*

<sup>93</sup> Buchanan to Mann, May 29, 1848, MS. Inst. Dip. Agent, etc., Germany, etc., I bis, 13.

Mann his views "in detail, of the affairs of Europe."<sup>94</sup> While he was negotiating with Hanover, he wrote Buchanan that the United States should interest itself in the abolition of the transit duties not only there but everywhere, especially in Austria and Switzerland. He urged also that pressure be put on Denmark to abolish the sound dues. Denmark, he believed, derived "more benefits from her navigation with the United States than any [other] state in Europe," and the United States, in consequence, was in the best possible situation to use pressure for the abolition of an important impediment in the path of a free flow of commerce.<sup>95</sup> Somewhat later he made a definite proposition that the United States should undertake to secure the removal of transit dues and river tolls in the states composing the Zollverein. This task, he felt, was one which would require great energy and activity. Prussia "would be obstinate for a time," but if that country made too much difficulty, pressure could be brought by abrogating the treaty of 1828, under which its shipping had built up a very lucrative business.<sup>96</sup>

This last recommendation struck root. The tariffs of the Zollverein were a source of anxiety. Buchanan agreed that "it would be a matter of vast importance to the great interests of this county, if the Customs-Union of Germany would either consent to become a party to the Hanoverian Treaty, or conclude a Treaty

<sup>94</sup> Mann to Clayton, May 10, 1849, MS. Desp. Mann.

<sup>95</sup> Mann to Buchanan, No. 2, May 15, 1846, MS. Desp. Mann.

<sup>96</sup> *Id.* to *id.*, No. 5, June 27, 1846, MS. Desp. Mann.

with the United States upon similar terms." How important was evident from the figures showing the trade between the United States and the free cities of Hamburg and Bremen, on the one hand, and between America and the states of the Zollverein, on the other. A new steamship line was to run between the United States and Bremen. If the bars were let down somewhat, it would open the way to an active exchange of the American staples,—tobacco, cotton, rice, and whale oil,—for German manufactures. The difficulties were twofold. The United States had not maintained missions in the states of the Zollverein and the preliminary cultivation of the desired ideas had not, as a result, been attended to. In the second place, no one state could act alone. It was not possible to go at the problem piecemeal, as had been done with Hanover, Bremen, Hamburg, Oldenburg, and the Mecklenburgs. It was necessary to persuade each and then get action by a clumsy organism.

Under these circumstances Mann was instructed to "pass a few days at the seats of Government of the more important States of the Zoll-Verein, such as Bavaria, Wurtemberg, Saxony, Baden, Hesse Darmstadt, Nassau, Brunswick, Hesse Cassel and the free city of Frankfort-on-the-Maine. Your extensive, as well as minute, knowledge of German affairs, will enable you, in conversation with the authorities of these countries, to explain and enforce the reasons why they should consent to accede to the terms of the

Hanoverian treaty.”<sup>97</sup> This was a very large order. It displayed much more confidence in Mann’s abilities than appreciation of the realities of the difficulties involved in such a task. What Mann could have achieved along the lines of these instructions cannot be known because the revolution of 1848 broke out while he was in the midst of his task, disrupted his work, and shifted the center of interest to other fields.<sup>98</sup>

During the same period Mann was sent twice to Hanover for commercial negotiations. The first errand had to do with rice. Hanover, Oldenburg, and the Mecklenburgs had a very moderate duty upon husked rice. This operated to the benefit of the Dutch, whose Java rice when shipped ready for market sold for a lower price than the American. The United States would have an advantage, however, due to the shorter distance and consequently lower freight rates, if rice were shipped unhusked, as paddy. But paying the same duty as the husked rice, a duty levied on the basis of weight, practically drove it from the market. Buchanan desired Mann to attempt to have paddy made duty free on the ground that “the revenue which Hanover and Oldenburg might lose by the change, would probably be compensated by the employment thus afforded to their subjects in cleaning the article

<sup>97</sup> Buchanan to Mann, June 26, 1847, loc. cit.; credence, MS. Credences, III, 254.

<sup>98</sup> MS. Desp. Mann, *passim*.



from the husk and preparing it for market."<sup>99</sup> The other point to be discussed with Hanover grew out of a complaint by Bremen that Hanover was charging a transit duty upon the four American staples in contravention of the eighth article of the treaty of 1846, which stipulated the abolition of such duties.<sup>100</sup> This task took about a week, and Mann left Hanover convinced that there was no occasion for the representations suggested by Bremen.<sup>101</sup>

In 1849 a special agent was sent to Siam. Edmund Roberts had made a treaty with that country in 1833, but no benefits to American commerce resulted "in consequence of the enormous tonnage duties exacted by the Siamese Government: amounting to an entire and absolute prohibition of our shipping." Joseph Balestier was directed to stop, on his barnstorming diplomatic tour, and point out the absurdity of this tax, which reduced the treaty to a nullity, and explain the benefits which would accrue to both countries if the spirit of the treaty were observed.<sup>102</sup> There was another point, also, which needed discussion. The Siamese government declined to allow an American consul or commercial agent to reside at Bangkok. The

<sup>99</sup> Buchanan to Mann, June 26, 1847, loc. cit.

<sup>100</sup> Id. to id., Nov. 13, 1847, MS. Inst. Dip. Agents, etc., Germany, etc., I bis, 9.

<sup>101</sup> Mann to Buchanan, Dec. 14, 1847, private, MS. Desp. Mann; id. to id., No. 8, Dec. 20, 1847, *ibid.*

<sup>102</sup> Clayton to Balestier, Aug. 16, 1849, MS. Inst. Sp. Miss., I, 292-301; power, MS. Credences, III, 318.



tenth article of Roberts' treaty provided that if, in the future, "any foreign nation other than the Portuguese shall request and obtain His Majesty's consent to the appointment of consuls to reside in Siam, the United States shall be at liberty to appoint consuls to reside in Siam, equally with such other foreign nation."<sup>103</sup> No such event had happened. The Portuguese were still the only people represented by a consul, but the American government was no longer content to see Portugal occupy a favored position, and directed Balestier to secure a modification in favor of the United States.<sup>104</sup> Balestier failed,<sup>105</sup> and in 1855 a new effort was made by Townsend Harris. He found a local proverb to the effect that if one was to succeed in negotiating with Siam, he must come with three ships, "one loaded with presents, another with patience, and a third ready for things to be carried away."<sup>106</sup> After a good deal of difficulty, Harris secured the desired modifications of policy by means of a new treaty, May 29, 1856.<sup>107</sup> The fifth article of the Harris treaty, however, was not acceptable to the Senate. It provided that "all American citizens intending to reside in Siam shall be registered at the American consulate ;

<sup>103</sup> Haswell, *Treaties*, 994.

<sup>104</sup> Clayton to Balestier, Aug. 16, 1849, *loc. cit.*

<sup>105</sup> Balestier's report, Nov. 25, 1845, Serial 618, Doc. 38, 8-16, 23-24; correspondence, *ibid.*, 47-79, 107-108, 121-125.

<sup>106</sup> W. E. Griffis, *Townsend Harris, First American Envoy in Japan* (Boston, 1895), 18, 25.

<sup>107</sup> Haswell, *Treaties*, 995, 1381; King of Siam to President Pierce, June 10, 1856, MS. Special Agent Bundle.

they shall not go out to sea nor proceed beyond the limits assigned by this treaty for the residence of American citizens without a passport from the Siamese authorities, to be applied for by the American consul; nor shall they leave Siam if the Siamese authorities show to the American consul that legitimate objections exist to their quitting the country.”<sup>108</sup> As a result of the elimination of this article, it was necessary to make the exchange of ratifications something more than a formality, and Charles W. Bradley, consul at Ningpo, was appointed a special agent to take out the amended treaty, negotiate with the Siamese authorities for the acceptance of the change, and then exchange ratifications. He was sent upon the naïve assumption that no objection would be made to the omission of the article.<sup>109</sup> As a matter of fact, he found it regarded as a *sine qua non*, and it was only by embodying the principle in a domestic regulation in accordance with the provisions of another article of the treaty that he was able to secure the ratification, June 15, 1857.<sup>110</sup>

Joseph Balestier, during the same mission on which he failed to secure a new treaty with Siam, succeeded in negotiating a treaty with Borneo. The United

<sup>108</sup> Sen. Ex. Jol., X, 256.

<sup>109</sup> Cass to Bradley, March 18, 1857, MS. Inst. Sp. Miss., III, 83-85.

<sup>110</sup> Bradley to Thomas, assistant secretary, unofficial, June 17, 1857, MS. Special Agent Bundle; Bradley to Cass, June 29, 1857, *ibid*.

States did not maintain any representative there, consular or otherwise. It was necessary, therefore, to commit the task of ratification to a special agent. The matter was relatively simple, there being only one complication. The treaty was signed June 23, 1850, and two years were allowed for the exchange of ratifications. Due to delays it did not reach the Senate until the day before the expiration of the two years.<sup>111</sup> In 1853, the treaty was given into the charge of Captain William J. McCluney, of the steam frigate *Powhatan*, who was instructed to negotiate for consent to an extension of time.<sup>112</sup> This he did without difficulty, completing the exchange of ratifications July 11, 1853.<sup>113</sup>

There was no regular representative of the United States in Japan between Perry's signing of the first treaty, March 31, 1854, and the arrival of Townsend Harris as consul general, August 21, 1856.<sup>114</sup> Therefore, a special agency was necessary for the exchange of ratifications. In September, 1854, a blank power was sent to Captain Joel Abbot, who commanded the American squadron in the East and later was in charge of the United States legion in China.<sup>115</sup> Abbot fol-

<sup>111</sup> Sen. Ex. Jol., VIII, 400.

<sup>112</sup> Everett, Secretary of State, to McCluney, Feb. 1, 1853, MS. Inst. Sp. Miss., III, 15-18.

<sup>113</sup> McCluney to Marcy, July 12, 1853, April 3, 1854, MS. Special Agent Bundle.

<sup>114</sup> Treat, Japan and the United States, 33.

<sup>115</sup> May—Nov., 1855.

lowed the suggestion of the Department of State in appointing Commander Henry A. Adams the bearer of the treaty. Adams exchanged the ratifications February 21, 1855, and was instructed by Abbot to transmit them to Washington.<sup>116</sup>

Two special agencies to Greece grew out of a matter of claims. The United States had recognized Greece in 1837, but did not establish a legation until thirty years afterward. The claim of an American citizen, therefore, when one arose, had to be handled through special agents. Reverend Jonas King was a claimant. He had gone to Greece originally as a relief worker during the Greek war of independence. In 1830 he established a connection with the American Board of Foreign Missions, and remained in Athens. While the city was in a state of ruin as a result of the wars he purchased a considerable tract of ground. When it became the capital of Greece and plans were laid out for its rehabilitation, King's land was involved, and for sixteen years it remained under an injunction from the government which prevented its sale, division, or use for building purposes. During those years the matter had been pressed upon the attention of the Greek authorities by Dr. King himself, and by successive American consuls, but wholly without effect.

<sup>116</sup> Marcy to Adams, Sept. 22, 1854, MS. Inst. Sp. Miss., III, 62; Marcy to Dobbin, Secretary of Navy, Sept. 23, 1854, *ibid.*, 62-64; Marcy to Abbot, Sept. 23, 1854, *ibid.*, 64-65; Abbot to Adams, Jan. 9, 1855, MS. Special Agent Bundle; Abbot to Marcy, April 3, 1855, *ibid.*; Adams to Marcy, June 25, 1855, *ibid.*

Dr. King, becoming acting consul, was in a position to state his case more forcibly to the home government. But action was really precipitated by an event which had no ostensible connection with the claim. King was arrested for heterodox preaching, tried, and condemned to fifteen days' imprisonment and to banishment. In view of the fact that he had been engaged in missionary activity for twenty years, and that there were other American clergymen there who were not molested, it looked as though the prosecution had persecution for its real purpose.

Up to this point the United States had had to rely upon King's own statements, and it was thought to be necessary, before making representations, to investigate the whole matter. To that end the American minister at Constantinople, George P. Marsh, was detached from his post, in 1852, and sent to Greece in the character of a special agent to make the investigation.<sup>117</sup> The result of Marsh's investigation was wholly in favor of King. He became suspicious at the very outset of the *bona fides* of the Greek government. Suspicion grew to conviction, so that he reported: "It is, in my judgment, past all doubt, that the government of Greece has treated Dr. King with flagrant injustice and bad faith with regard to his claim for compensation for his land." Marsh felt equally clear as to the other branch of his inquiry,—

<sup>117</sup> Webster to Marsh, April 29, 1852, MS. Desp. to Consuls, XIV, 294; Serial 751, Sen. Ex. Doc. 9, 2; memorial of Marsh, Serial 772, Sen. Misc. Doc. 8, 1-2.

the legality of the prosecution for heterodox preaching. "In the criminal prosecution against him the legal tribunals of Greece . . . have been guilty of an abuse of the principles of justice, and a perversion of the rules of law, as flagitious as any that ever disgraced the records of the Star Chamber."<sup>118</sup>

In view of such a report, and the opinion of the investigator that "it would be tantamount to a denial of justice to refer the claimant to the courts of Greece, for redress or the establishment of his rights, and his only hope of relief is to be found in the action of his own government,"<sup>119</sup> there was nothing to be done but to present a claim. Marsh was directed, therefore, to repair again to Athens and take up the question with the foreign minister, Paicos. The matter was to be vigorously pressed, the earnestness of the American government was to be demonstrated, though "the tone or language of menace" was to be avoided, and the American government was to be left "entirely uncommitted as to ulterior measures."<sup>120</sup> Marsh found the Greek government anything but easy to deal with, and before he could press the matter to a settlement, he felt it necessary to return to his post in Constantinople because of "the alarming posture of affairs" in that city. There was serious danger of war following

<sup>118</sup> Marsh to Webster, Aug. 21, 1852, MS. Desp. Turkey, XII; Serial 751, Doc. 67, 12-14.

<sup>119</sup> Id. to id., Aug. 21, 1852, second letter, MS. Desp. Turkey, XII; Serial 751, Doc. 67, 35.

<sup>120</sup> Everett to Marsh, Feb. 5, 1853, MS. Inst. Turkey, I, 357; Serial 751, Doc. 9, 5-9; Moore, Digest, VI, 262-263.



the rupture in the negotiations of Prince Menshikoff, who had presented an ultimatum from Russia which was rejected by the Turkish authorities in May, 1853.<sup>121</sup> Upon his departure he left propositions pending, and correspondence continued until he left Constantinople to return to the United States later in the same year.<sup>122</sup>

Before Marsh dropped the matter some progress had been made toward a settlement. In July, 1855, the subject was again taken up, and Roger Pryor was despatched to Athens to see that the assurances of Paicos, that matters would be adjusted, were carried into effect. In addition, Pryor was to gather all possible data about the condition of Greece, concerning which the department was sadly lacking in information.<sup>123</sup> He closed up the matter, securing a "satisfactory" indemnity, which amounted to about one-fourth the original claim.<sup>124</sup> The Greek government had revoked the sentence of banishment before Pryor's appointment, and that question did not enter into his mission.<sup>125</sup>

<sup>121</sup> Marsh's memorial, *loc. cit.*

<sup>122</sup> Marsh's correspondence, March 11—Oct. 11, 1853, Serial 751, Doc. 67, 139-198; thirteen despatches, MS. Desp. Turkey, XII.

<sup>123</sup> Marcy to Pryor, July 18, 1855, MS. Inst. Turkey, I, 388-392.

<sup>124</sup> Pryor to Marcy, Oct. 19, 22, 29, Nov. 1, 6, 1855, MS. Special Agent Bundle; Richardson, Messages and Papers, V, 335-336; Moore, Digest, VI, 264; Webster to Marsh, April 29, 1852, *loc. cit.*

<sup>125</sup> Marcy to Pryor, July 18, 1855, *loc. cit.*



While minister to Turkey, Marsh had negotiated a treaty of amity and commerce with Persian representatives in Constantinople, October 9, 1851, but ratifications were never exchanged.<sup>126</sup> Since no American representative had been sent to Persia and the United States government had no intention of establishing a regular mission there in the immediate future, Carroll Spence, minister to Turkey, was specially commissioned, in 1855, to make another attempt to negotiate a treaty with Persian representatives in Constantinople. A treaty was signed December 13, 1856, and ratifications were exchanged within the six months provided for by the treaty.<sup>127</sup> It was 1883 before an American legation was established in Persia.<sup>128</sup>

The treaty which had been negotiated with Paraguay by Pendleton in 1853 was carelessly drafted. The Senate made thirty-two changes, most of them in order that the United States might be called by its proper name.<sup>129</sup> The problem of securing Paraguayan consent to these changes and the exchange of ratifica-

<sup>126</sup> Hasse, Index, II, 1270; power, June 28, 1850, MS. Crendences, III, 367; instructions, June 28, 1850, March 20, 1852, MS. Inst. Turkey, I, 342, 353; despatches from Marsh, April 18, 1850, Dec. 18, 1851, April 30, 1852, MS. Desp. Turkey, XIII.

<sup>127</sup> Hasse, Index, II, 1270; power, May 24, 1855, MS. Crendences, IV, 112; six letters to Spence, May 11, 1855—April 1, 1857, MS. Inst. Turkey, I; sixteen despatches from Spence, Nov. 25, 1854—July 17, 1857, MS. Desp. Turkey, XIV.

<sup>128</sup> For. Rel., 1883, 702-706; Richardson, Messages and Papers, VIII, 174, 503.

<sup>129</sup> Sen. Ex. Jol., IX, 318-319.

tions were committed to Lieutenant Thomas Jefferson Page, the commander of the *Water Witch*, who had been instructed in 1853 to negotiate the treaty, but had found on his arrival in Paraguay that the work was done.<sup>130</sup> Charles R. Buckalew, who carried the despatches to Page, was empowered to act in case anything prevented him from communicating with the commander of the *Water Witch*.<sup>131</sup> The instructions reached Page October 16, 1854, and he promptly sent an officer to Asuncion to notify the Paraguayan government of his proposed mission. The letter was not received on the ground that it was in English and not accompanied by a translation. As a matter of fact, a number of troubles had developed since the negotiation which made it difficult to secure the ratification of Paraguay, and Page, after the fracas in which the *Water Witch* was involved, left the treaty at the American legation in Buenos Aires.<sup>132</sup>

<sup>130</sup> Marcy to Page, June 2, 1854, MS. Inst. Sp. Miss., III, 45-47; Serial 938, 35 Cong. 1 Sess., Sen. Rpt. 60, 42; power, June 6, 1854, MS. Credences, III, 51.

<sup>131</sup> Marcy to Buckalew, June 2, 1854, MS. Inst. Sp. Miss., III, 43-45; power, June 6, 1854, MS. Credences, III, 51.

<sup>132</sup> Page to Marcy, Oct. 17, Nov. 5, 1854, Jan. 28, 1856, Secret Service Vol., I, 671, 673, 692; Serial 938, Rpt. 60, 43, 44-47, 51-52; Buckalew to Marcy, Jan. 14, 1855, Secret Service Vol., I, 681.

In 1853 the United States sent the naval vessel *Water Witch* to make a survey of the tributaries of the Rio de la Plata. Permission was received from the governments of Brazil and the Argentine Confederation, but Paraguay had forbidden foreign men-of-war to enter waters within its jurisdiction. In Feb., 1855, the *Water Witch* was fired on from a Paraguayan fort on the

News of the failure of Page reached the Department of State on the last day of March, 1856. On August 5, of the same year, Richard Fitzpatrick, who was going out as secretary of the American legation to the Argentine Confederation, was appointed a special agent to Paraguay.<sup>133</sup> The principal business on which he was sent was the ratification of the treaty negotiated over three years before. It was impossible, however, to overlook the fact that a situation full of difficulty existed. Fitzpatrick, therefore, was directed to impress upon the officials of Paraguay the desire of the President to maintain friendly relations. He was also informed of the difficulties between the Paraguay Navigation Company and the government of Paraguay. The opinion of the department was that an injustice had been done, and Fitzpatrick was instructed, after discussing the question of ratifications, to set forth the American view on that matter.<sup>134</sup>

Fitzpatrick regarded the exchange of ratifications his most important task, and had been distinctly in-

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Parana at a point where the river formed the boundary between the Argentine Confederation and Paraguay but where the only navigable channel was on the Paraguayan side. The fire was returned by the *Water Witch*, whose helmsman was killed in the brief encounter. Moore, *Arbitrations*, II, 1487-1488; Serial 938, Rpt. 60, 3.

<sup>133</sup> Fitzpatrick to Cass, March 25, 1857, MS. Desp. Argentine Republic, XI.

<sup>134</sup> Marcy to Fitzpatrick, Aug. 5, 1856, Serial 938, Rpt. 60, 52; Fitzpatrick to Cass, loc. cit.; Moore, *Arbitrations*, II, 1491-1492; for a brief account of the Paraguay Navigation Company, see *ibid.*, 1485-1487.

structed to make it the first of his duties.<sup>135</sup> He was quite unwilling to deal with other topics until the matter of the treaty was settled. Indeed, when pressed to discuss other issues, Fitzpatrick declared that his mission was "solely for the purpose of exchanging the ratifications of the treaty."<sup>136</sup> The foreign minister, on the other hand, was disposed to trade on the fact that the United States desired to have the treaty ratified, and insisted on discussing other topics first. The negotiations broke down at that point, and Fitzpatrick left Asuncion with the treaty unratified and the situation between the two countries still more strained.<sup>137</sup>

It can hardly be said that there had been any diplomacy worthy of the name. Edward A. Hopkins was at the center of the difficulties concerning the Paraguay Navigation Company, and his record was such as to create a doubt whether the opposing party in a dispute with him was certain to be all wrong. On the affair of the *Water Witch* the United States had only an *ex parte* report. Page had been instructed solely on the matter of ratification, and, to say the best,

<sup>135</sup> Marcy to Fitzpatrick, loc. cit.

<sup>136</sup> Fitzpatrick to Vazquez, minister of foreign affairs, Nov. 10, 1856, Serial 938, Rpt. 60, 54-55; for the note which it answers, see *ibid.*, 53.

<sup>137</sup> Peden, minister to Argentine Confederation, to Marcy, Oct. 24, Dec. 18, 1856, Jan. 15, 17, 26, 29, 1857, MS. Desp. Argentine Republic, XI; Fitzpatrick to Cass, loc. cit.; Vazquez to Fitzpatrick, Nov. 15, 1856, Serial 938, Rpt. 60, 55-56; Fitzpatrick to Vazquez, Nov. 18, 1856, *ibid.*, 56-57; Vazquez to Fitzpatrick, Nov. 26, 1856, *ibid.*, 57.

had not been very tactful. Finally, Fitzpatrick had been only vaguely instructed and had interpreted his instructions in such a way as to preclude the free and full exchange of opinions on matters at issue. The powers of the agents had been so limited, and their personal qualities were such, that there had been no adequate attempt to reach an amicable settlement.

In his first annual message, President Buchanan adverted to the problem. He informed Congress of the refusal of the president of Paraguay to ratify the treaty. He recounted the *Water Witch* episode, which he felt "constrained to consider . . . as unjustifiable and as calling for satisfaction from the Paraguayan Government." The message went on to say: "Citizens of the United States also who were established in business in Paraguay have had their property seized and taken from them, and have otherwise been treated by the authorities in an insulting and arbitrary manner, which requires redress. A demand for these purposes will be made in a firm but conciliatory spirit. This will the more probably be granted if the Executive shall have authority to use other means in the event of a refusal. This is accordingly recommended."<sup>138</sup> This recommendation was in accord with one of the reports of Lieutenant Page, who had suggested a display of naval force as a means of persuading Paraguay to ratify the treaty, on the ground that it was one of those "governments with which peaceable and friendly relations . . . can be maintained only by an exhibition

<sup>138</sup> Richardson, Messages and Papers, V, 449.

of a sufficient force, and a determination to submit to no indignity.”<sup>139</sup> The documents were sent to the Senate and House,<sup>140</sup> and a report was brought in by the foreign relations committee of the Senate which recommended that the President be “authorized to adopt such measures and use such force as in his judgment may be necessary and advisable, in the event of a refusal of just satisfaction by the government of Paraguay.”<sup>141</sup> The resolution passed the House and Senate, and an appropriation was made to defray expenses.<sup>142</sup>

In September, 1858, James B. Bowlin set out on a special mission “to Paraguay with full powers and instructions to settle these difficulties in an amicable and peaceful manner if . . . practicable. His experience and discretion justify the hope that he may prove successful in convincing the Paraguayan Government that it is due both to honor and justice that they should voluntarily and promptly make atonement.” But in view of the possibility that the satisfaction would be denied, “the Secretary of the Navy, under my direction, has fitted out . . . a naval force to rendezvous near Buenos Ayres, which, it is believed, will prove sufficient for the occasion.”<sup>143</sup> The armed

<sup>139</sup> Page to Marcy, Nov. 5, 1854, loc. cit.

<sup>140</sup> Serial 919, 35 Cong. 1 Sess., Sen. Ex. Doc. 11; Serial 942, H. Ex. Doc. 2.

<sup>141</sup> Serial 938, Rpt. 60, 1-5.

<sup>142</sup> Stat. at Large, XI, 370, 319.

<sup>143</sup> Second annual message of Buchanan, Dec. 6, 1858, Richardson, Messages and Papers, V, 519-520.



force was sufficient,—“it consisted of 19 armed vessels, great and small, carrying 200 guns and 2,500 men, all under the command of the veteran and gallant Shubrick.”<sup>144</sup> The threat proved effective and Bowlin in three weeks negotiated a treaty of commerce and navigation, and a claims convention. He also received apologies for the *Water Witch* incident and indemnity for the family of the seaman who had lost his life.<sup>145</sup>

The interest which Seward manifested, in preparing to send a successor of Cazneau to Santo Domingo, did not evaporate in the course of the Civil War. He kept an active interest in the country and it became involved in the aggressive and expansionist diplomacy which he pursued in the West Indies when the great struggle was over. After the abandonment of Santo Domingo by Spain, recognition of the republic was not long withheld.<sup>146</sup> However, recognition did not lead to an exchange of ministers. More than twenty years elapsed before a regular minister was sent, but immediately after recognition J. Somers Smith was appointed commercial agent. Soon after his arrival, August 1, 1866, he had a talk with the minister of foreign affairs, in the course of which he suggested the

<sup>144</sup> Third annual message of Buchanan, Dec. 19, 1859, Richardson, Messages and Papers, V, 560.

<sup>145</sup> Ibid.; Moore, Arbitrations, II, 1494-1495.

<sup>146</sup> Spain withdrew under a law of April 30, 1865. Moore, Digest, VI, 518. Recognition was accorded by the United States, Sept. 17, 1866, by the issue of an exequatur to a Dominican consul general at New York. Ibid., I, 107.



desirability of Samana Bay as a naval station for the United States. The proposition seemed to be reasonably well received, and Smith reported the matter to Seward.<sup>147</sup> Early in November the Dominican foreign minister wrote a "very confidential" note to Seward, inquiring whether, in view of the deplorable state of his country resulting from the long struggle with Spain, the United States would consider loaning a million dollars and some artillery.<sup>148</sup> On the same day Smith made a further report, in which he discussed the matter of the proposed loan, mining and other concessions, and a naval coaling area, expressing the opinion that it was possible to negotiate on favorable terms.<sup>149</sup>

On the strength of these various representations, Seward sought an extra appropriation for the secret service fund,<sup>150</sup> and despatched his son, assistant Secretary of State Frederick W. Seward, and Vice Admiral Porter to Santo Domingo. The project was to secure the cession or lease of Samana Bay for two million dollars, payable half in cash, and half in arms and ammunition. They were first to make certain that the government was sufficiently stable to carry on the negotiation, and to investigate the "competency of the Executive for the time being to enter into and ratify the Convention, or whether the consent of the Domini-

<sup>147</sup> Testimony of J. S. Smith, Serial 1409, Rpt. 234, 159.

<sup>148</sup> Secretary Fish, quoting Seward, Serial 1440, Doc. 17, 5.

<sup>149</sup> *Ibid.*

<sup>150</sup> F. Bancroft, *The Life of William H. Seward* (New York, 1900), II, 486.

can Congress to the instrument will be indispensable to its validity." The negotiators were to insist upon the immediate ratification of the convention by the Dominican Republic, and that accomplished, they were authorized to pay over a considerable sum in gold at once.<sup>151</sup> Whether the treaty provided for cession or lease, the United States was to have the right to "fortify and garrison and protect" the area involved "with such fortifications and land and naval forces as the President of the United States may deem expedient."<sup>152</sup>

Seward and Porter found disappointment because the United States would not consider making a loan. They found, also, that while the prospect of generous payment for cession or lease was attractive, there was a provision of the new Dominican constitution expressly forbidding the alienation of any part of the national territory. Even if that difficulty could be surmounted, there would yet remain the suspicion incident to such a negotiation. At another time, when the United States had sought the same objects, foreign nations had persuaded the Dominicans that Yankee aggression was concealed somewhere in the proposition. The Spanish episode had operated to increase "distrust of foreign powers" and create "a dread of foreign designs for aggrandizement." Even if the government could be persuaded that these were base-

<sup>151</sup> W. H. Seward to F. W. Seward, Dec. 17, 1866, MS. Inst. Sp. Miss., II, 39-42; extract, Moore, Digest, I, 599-600.

<sup>152</sup> Draft of Article IV, MS. Inst. Sp. Miss., II, 42.

less, there was the danger of political difficulties because the people could not be so persuaded. Under these circumstances Seward and Porter could not obtain a proposition acceptable to the United States, and set out for Washington in January, 1867, while "tears stood in the eyes of the administration at the thought of so much specie being carried away which ought to have belonged to them."<sup>153</sup>

Though the project did not have the support of the Secretary of the Navy, on the ground that it was "a scheme, personal and political, on the part of Seward, a tub thrown to assure Thad Stevens and Fessenden," rather than a necessity for the naval defense of the United States,<sup>154</sup> it was not abandoned. It was expected that in due time the thought of what had been lost by the failure of the negotiation would produce a change of mind among Dominican officials. J. Somers Smith served as a means of keeping in touch with the sentiment of that government. When a report was received from him to the effect that a change of sentiment appeared to be taking place, he was sent a full power and instructions to negotiate whenever the proper moment arrived. As in the case of Seward and Porter, his instructions took cognizance of the fact "that there may be immediate requirements which

<sup>153</sup> F. W. Seward to W. H. Seward, Jan. 19, 20, 21, 22, 1867, MS. Special Agent Vol., I; Porter, "Secret Missions to San Domingo," 629; Serial 1440, Doc. 17, 6.

<sup>154</sup> Diary of Gideon Welles, Secretary of the Navy under Lincoln and Johnson, intro. by J. T. Morse, Jr. (Boston, 1911), III, 7, 40.

would seriously embarrass the Dominican Government, if a delay of several months" should "unavoidably intervene" between the signature and the exchange of ratifications. He was authorized, therefore, immediately on receipt of the ratification by the Dominican Republic, to pay seventy-five thousand dollars in case of cession, or twenty-five thousand in case of lease.<sup>155</sup>

The nibble which Smith had reported failed to be followed by a bite, and on May 8, 1867, the full power was recalled, and the agent instructed to notify the president of the republic that the proposals of the United States were withdrawn.<sup>156</sup> Even then the matter was not closed. A further report of Smith, dated June 8, led to his being informed, confidentially, "that the delay and apparent indisposition of the Dominican

<sup>155</sup> F. W. Seward, acting, to Smith, Feb. 26, 1867, MS. Inst. Sp. Miss., II, 43-46. Smith concluded a treaty of amity and commerce with the Dominican Republic, Feb. 8, 1867. When the matter of compensation came up the following year, Sumner, chairman of the Senate committee on foreign relations, requested a list of precedents. In his reply, Dec. 21, 1868, Seward said: "The Department has not been able to discover a precedent exactly in point. There is believed to have been no other instance where business of such importance has been entrusted to and successfully accomplished by a mere Commercial Agent." Smith had been employed because of his "capacity," "experience," and "familiarity with the Spanish language. . . . Perhaps however sufficient precedent for such an appropriation may be found in the act of Congress" which made an appropriation to Commodore Perry for concluding the treaty with Japan. MS. Report Book, X, 57.

<sup>156</sup> Seward to Smith, May 8, 1867, MS. Inst. Sp. Miss., II, 54-55.

Government has rendered it expedient for the United States to open parallel negotiations in other quarters," but it was barely possible "that a proposition by Santo Domingo, equivalent to that which we have withdrawn, if her Government should reconsider the question, might come in time to be accepted by us. Should such a proposition be submitted, you will promptly communicate it to me, without, however, in any way promising that it will be accepted."<sup>157</sup>

Months went by and no such proposition was submitted. When, in November, Smith was again approached and the suggestion dropped that the Dominican government was ready to negotiate, it met a different response. A tone of high reproach was assumed. A parade was made of the "formal and solemn proceedings" by which the Dominican government had closed the door to negotiation, and which made it "incompatible with the self respect of this Government" to embark upon new discussions without authentic evidence that the hints really had a substantial basis. This instruction, which was to be shown to the minister of foreign affairs, concluded with a moral: "I do not doubt that the Government of the Dominican Republic will soon come to the conviction that a transfer by that Government of the peninsula of Samana to the United States would have been a harbinger of independence and prosperity instead of a danger to that republic. I regret only that this conviction will come so late. The independent States in the West

<sup>157</sup> *Id.* to *id.*, July 1, 1867, MS. Inst. Sp. Miss, II, 56-58.

Indies, in Central America, and South America will, in every case, find jealousy of the United States a policy less injurious to the United States than unfavorable to their own security and welfare.”<sup>158</sup>

The next move in the game was through Congress. The attention of some of the members of that body was drawn “in a discreet and confidential manner” to the situation.<sup>159</sup> The result was the appearance in the House of Representatives of a resolution, sponsored by General N. P. Banks, chairman of the committee on foreign affairs, authorizing the President, after gaining the consent of the Dominican Republic, to extend it naval protection. Later another resolution, by another member of the committee, declared the consent of Congress to the annexation of the Dominican Republic, in case the people of that state were willing. Neither of these fared very well, and Seward explained their difficulties on the ground that the movers of the resolutions “proceeded upon information which is regarded by the executive department as confidential and therefore was not in possession of the House of Representatives.”<sup>160</sup> In order to strengthen its position, the House committee sought further information which it could use in a public manner, and suggested the employment of a special agent. General Banks, indeed,

<sup>158</sup> Seward to Smith, Dec. 13, 1867, MS. Inst. Sp. Miss., II, 60-62.

<sup>159</sup> Id. to id., Jan. 6, 1869, MS. Inst. Sp. Miss., II, 65.

<sup>160</sup> Id. to id., Feb. 5, 1869, MS. Inst. Sp. Miss., II, 66-68.



went so far as actually to suggest the person whom he considered best for the agency.<sup>161</sup>

Banks's choice was Joseph W. Fabens. He had been an American representative in Nicaragua in 1854, but was at this time an agent of Baez, the Dominican president. He had come to Washington in May, 1868, to lay before Seward "in an informal and strictly confidential manner a plan for the complete realization of" Seward's "patriotic and comprehensive views for the advancement of American interests" in the West Indies. His coming was sponsored by Cazneau, whose record was not such as to inspire fullest confidence.<sup>162</sup> It was Fabens who transmitted to President Johnson the offer of Baez to unite with the United States: "If the Honorable Congress will assume the direction of the destinies of the Dominican Republic, we its people will hasten to show our gratitude by a frank and open ratification."<sup>163</sup>

Fabens, therefore, was the man who had precipitated the situation that existed in February, 1869. One would hardly have expected to see him chosen to make an investigation of a matter in which he was so deeply involved. But Fabens had assured Banks that it would "be his aim to obtain a full and exact report," and Banks took his word for it.<sup>164</sup> These were the circum-

<sup>161</sup> Id. to id., Feb. 15, 1869, MS. Inst. Sp. Miss., II, 69.

<sup>162</sup> Cazneau to Seward, April 18, 1868, MS. Reports, Santo Domingo, 1857-1871.

<sup>163</sup> Baez to Johnson, Jan. 8, 1869, MS. Reports, Santo Domingo.

<sup>164</sup> Banks to Seward, Feb. 15, 1869, Serial 1409, Rpt. 234, 173; Seward to Smith, Feb. 15, 1869, loc. cit., and endorsement of W. Hunter thereon.



stances under which an American citizen, in this country as the agent of a foreign government, was sent to that same country as American agent,—thus representing both at the same time.<sup>165</sup> Fabens went in February, 1869, and was given for instructions simply General Banks's letter to Seward requesting information on the financial and political condition of Santo Domingo. He reported in Washington, April 1, with an elaborate collection of data,<sup>166</sup> and resumed his rôle as agent for Baez until he was made minister from the Dominican Republic to the United States.<sup>167</sup>

Before Fabens reported, Grant had succeeded Johnson, and the President, rather than Secretary of State Fish, inherited Seward's interest in the island republic and the possibility of its annexation. Grant certainly chose the agent who went down to report on the situation and furnish material and background for the new administration in dealing with the problem. The man first selected was Benjamin S. Hunt, and there is no reason to suspect that there was anything more to his mission than appeared upon the surface. It was a

<sup>165</sup> Fabens to Fish, March 27, 1869, MS. Reports, Santo Domingo. He was, however, given no assurances, "express or implied, that he was to have his travelling or other expenses provided for by, or that he was to receive any compensation from this Government." Hunter's endorsement, *loc. cit.* He did, however, put in a bill of \$391.80 for travelling expenses. Fabens to Fish, April 22, 1869, MS. Reports, Santo Domingo.

<sup>166</sup> MS. Reports, Santo Domingo.

<sup>167</sup> His letters in this capacity are in the same volume. See, also, Serial 1409, Rpt. 234, XVI, XLI, 47, 101, 106, 161, 169, 173-174.

mere mission of inquiry.<sup>168</sup> But Grant's interest was developing rapidly, and when Hunt resigned because of sudden illness, he appointed his private secretary, Brigadier General Orville E. Babcock. His instructions from Fish followed the regular lines of those usually given a special agent charged with the task of making a comprehensive report on the political and economic condition of a country.<sup>169</sup> But Babcock had also verbal instructions from President Grant to inquire into the desires of the government and people of Santo Domingo with reference to annexation;<sup>170</sup> and he either had verbal instructions to make some commitments along that line, or else possessed the confidence of the President in such a remarkable degree that his superior would stand behind his assumptions of power even to the point of seriously compromising the relations between the Secretary of State and the President.<sup>171</sup>

<sup>168</sup> Fish to Hunt, June 2, 1869, MS. Special Agent Bundle; Serial 1440, Doc. 17, 8-9.

<sup>169</sup> Fish to Babcock, July 13, 1869, MS. Inst. Sp. Miss., III, 230-233; Serial 1409, Rpt. 234, 189; letter of credence, *ibid.*, 137.

<sup>170</sup> Van Tyne and Leland, *Guide to Archives of the United States*, 1.

<sup>171</sup> J. D. Cox, "How Judge Hoar Ceased to be Attorney-General," *Atlantic Monthly*, LXXVI, 164-166. Grant later said of Babcock, "He visited San Domingo, not to . . . hasten annexation, but, unprejudiced and unbiased, to learn all the facts about the Government, the people, and the resources of that Republic. He went certainly as well prepared to make an unfavorable report as a favorable one, if the facts warranted it. His report fully corroborated the views of previous commissioners, and upon its

In any event, in September, 1869, Babcock made a secret protocol of "bases, which shall serve for framing a definitive treaty," in which "His Excellency General Grant" was made to promise, "privately, to use all his influence, in order that the idea of annexing the Dominican Republic to the United States may acquire such a degree of popularity among members of Congress as will be necessary for its accomplishment; and he offers to make no communication to that body . . . until he shall be certain that it will be approved by a majority." The protocol continued with other bases as rash as the first.<sup>172</sup> These would have been extraordinary enough if they had been founded on written instructions; they were infinitely more so if founded on a verbal intimation from the President without the knowledge of the Secretary of State, or on the presumption of the agent. Grant accepted the work, and assumed responsibility for it in cabinet meeting by bringing it forward himself, without giving Fish an opportunity to express an opinion until after the President had fully committed himself.<sup>173</sup>

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receipt I felt that a sense of duty and a due regard for our great national interests required me to negotiate a treaty for the acquisition of the Republic of San Domingo." April 5, 1871, Richardson, Messages and Papers, VII, 129-130. This account is silent on the matter of the secret protocol which was the basis of the second mission.

<sup>172</sup> Serial 1409, Rpt. 234, 188-189; see, also, *ibid.*, 36-37; Serial 1440, Doc. 17, 9, 86, 90, 91, 92, 93.

<sup>173</sup> Cox, "How Judge Hoar Ceased to be Attorney-General," 166-167.

Babcock's first mission presents, even after all the light we now have is thrown upon it, many mysterious features. It is difficult to understand how all the cabinet members could have been astonished that Babcock's mission was not simply one of inquiry, for the Secretary of the Navy had directed the commander of the *Seminole* to "give him the moral support of your guns."<sup>174</sup> That would hardly have been necessary for a mere investigator, for the country was in no such state of disorder as to require naval support for a peaceful inquirer. In any case, the navy order makes President Grant's connection with the mission much closer and somewhat clearer. Such an order must have originated with the President; it is beyond the range of possibility, all the circumstances considered, that Fish should have suggested it.

Grant's connection with Babcock's schemes is even more evident from the fact that before the strained situation in his cabinet had been fully relieved he sent Babcock back to Santo Domingo, and Fish, who had tendered his resignation because Babcock had followed a policy contrary to the one he desired and that without his knowledge, was required to sign fresh instructions.<sup>175</sup> In the competition to influence the President's policy, the private secretary and not the Secretary of State had won. The letter of credence which Babcock carried opened with the words: "In order to carry out

<sup>174</sup> July 13, 1869, Serial 1409, Rpt. 234, 38-39.

<sup>175</sup> Fish to Babcock, Nov. 6, 1869, MS. Inst. Sp. Miss., III, 215-225; Serial 1409, Rpt. 234, 189-192.

the understanding that was informally come to" by Babcock, the President has directed a treaty to be made. While the full power was given to Raymond H. Perry, the American commercial agent, and the negotiation was "intrusted to his official care," it was abundantly evident that the real negotiator was Babcock. He went "without an official character" simply because the President thought "the laws of the United States . . . prevented . . . giving an official position" to General Babcock, but it was "hoped" that Gautier, minister of foreign affairs for the Dominican Republic, would "confer freely with him in these negotiations." The reason for the hope was that Babcock was "fully possessed of the President's views."<sup>176</sup>

The situation was further revealed in the instructions to Perry. These did not give him the background of the negotiation, or direct a course of discussion. They simply transmitted full power to sign a treaty, informed him that Babcock had "powers from the President to direct the naval force of the United States," and directed Perry to be "governed" by Babcock's advice.<sup>177</sup> General D. B. Sackett, who accompanied Babcock in the capacity of interpreter,<sup>178</sup> said

<sup>176</sup> Fish to Gautier, two letters, Nov. 6, 1869, MS. Inst. Sp. Miss., III, 227-229; Serial 1409, Rpt. 234, 193.

<sup>177</sup> Fish to Perry, Nov. 6, 1869, MS. Inst. Sp. Miss., III, 225-226; Serial 1409, Rpt. 234, 192; other instructions, Jan. 12, Mar. 31, May 3, June 13, 1870, MS. Desp. to Consuls, LVII, 106, 261, 327, 412; despatches from Perry, including full report, June 6, 1870, MS. Consular Desp. Santo Domingo, VI.

<sup>178</sup> Serial 1409, Rpt. 234, 43, 46.

his understanding "was that Mr. Perry should be present, General Babcock should conduct the proceedings, and Mr. Perry should sign them."<sup>179</sup> There was a further element in the situation which contributed to the selection of this sort of agent, and of Babcock in particular. The President looked forward to the moment when, after the conclusion of the treaty, it was to be put into execution. Babcock was "then, as an officer of the army of the United States, to take steps to carry out the agreement of the United States contained in said treaty, to protect the people of that republic against foreign interference while the nation is expressing its will, and also to protect the interests and rights which the United States may obtain under such convention."<sup>180</sup> This may be the explanation of the nature of his associates. For beside General Sackett, General Rufus Ingalls went along in a not very well defined capacity, having been sent by the Secretary of War and made subject to Babcock's orders.<sup>181</sup>

Babcock's negotiation of two treaties, in November, 1869, one for the annexation of Santo Domingo, and the other, an alternate, for the lease of Samana Bay, precipitated a storm.<sup>182</sup> The discussion in the Senate

<sup>179</sup> Serial 1409, Rpt. 234, 52. Perry's understanding was the same. *Ibid.*, 103.

<sup>180</sup> Fish to Babcock, Nov. 6, 1869, *loc. cit.*

<sup>181</sup> Serial 1409, Rpt. 234, 55; see, also, Serial 1409, Rpt. 234, 164.

<sup>182</sup> For further material on Babcock's missions, see MS. Reports, Santo Domingo.



was acrimonious; charges of bad faith were bandied about. On the one hand, it was charged that the treaty was for the benefit of a ring of speculators; on the other, it was asserted that Sumner had broken faith with the President. The latter charge developed into a quarrel which led to a rupture between the administration and the chairman of the Senate committee on foreign relations.<sup>183</sup> The former charge made it essential to demonstrate in some convincing way the *bona fides* of Grant. The President himself said on this point: "The mere rejection by the Senate of a treaty negotiated by the President only indicates a difference of opinion between two coordinate departments of the Government, without touching the character or wounding the pride of either. But when such a rejection takes place simultaneously with charges openly made of corruption on the part of the President or those employed by him the case is different. Indeed, in such case the honor of the nation demands investigation."<sup>184</sup>

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The Senate rejected the treaty of annexation. Fish to Gautier, July 8, 1870, MS. Inst. Sp. Miss., III, 233-234. In 1871 Fisher W. Ames, the commercial agent, was instructed to inform the Dominican minister of foreign affairs that the convention for the lease of Samana Bay could not become effective until approved by the Senate. He was also empowered to sign two additional articles, providing that the obligation of the United States "to pay the rent must depend upon an appropriation for that purpose" by Congress, and removing any time limit for the exchange of ratifications. The period of four months originally provided in the convention had previously been extended to a year. Fish to Ames, June 28, 1871, *ibid.*, II, 77-81.

<sup>183</sup> See above, 267-275.

<sup>184</sup> Richardson, Messages and Papers, VII, 130.



The method selected was the appointment of a commission of such standing and repute that its conclusions would carry conviction. In short, the commission was to be composed, as nearly as possible, of men the exact opposites of Babcock. This commission was appointed by the President, but it is difficult to call its members executive agents. On January 12, 1871, the President was not only definitely authorized by joint resolution of Congress to appoint them, but the same joint resolution instructed them.<sup>185</sup> Indeed, Grant felt that he could not, officially, give the commission any instructions. Andrew D. White, one of the commissioners, quoted him as saying: "Your duties are, of course, imposed upon you by Congress; I have no right as *President* to give you instructions, but as a *man* I have a right in this matter. . . . Now as a man, as your fellow citizen, I demand that on your arrival in the island, you examine thoroughly into all American interests there; that you study land titles and contracts with the utmost care; and that if you find anything whatever which connects me or any of my family with any of them, you expose me to the American people."<sup>186</sup> It was only in this personal fashion that the President shaped the inquiry.

<sup>185</sup> Stat. at Large, XVI, 591; see also Cong. Globe, 41 Cong. 3 Sess., 53, 190-198, 222-223, 225-226, 227, 239, 242, 244, 256, 257, 259, 266, 271, 291, 406-416, 430, 431. The report of the commission was submitted to Congress by the President, April 5, 1871. Richardson, Messages and Papers, VII, 128.

<sup>186</sup> Autobiography of Andrew Dickson White (New York, 1907), I, 487-488.

After the conclusion of the treaty between the United States and Samoa, January 16, 1878, Gustavus Goward accompanied the Samoan plenipotentiary back to the islands. There he received the ratified copy of the treaty and prepared a report on the political and commercial situation. Though Goward went in the capacity of commercial agent, he also performed necessary diplomatic duties. In August, he negotiated the acquisition by deed of transfer of the harbor of Pago Pago.<sup>187</sup>

The independence of Rumania and Serbia was recognized by the treaty of Berlin, July 13, 1878, subject to certain conditions. Although the United States accepted this action, regular diplomatic representatives were not sent immediately. However, the following summer, John A. Kasson, minister to Austria-Hungary, was sent to the Balkan states to make inquiries regarding the establishment of diplomatic intercourse, to investigate the commercial situation, and to negotiate treaties on that subject. He made a report in November, and continued to correspond on the subject. Relations were regularized with Rumania in 1881 when Eugene Schuyler was made chargé. That same year he was sent to Serbia to negotiate a commercial treaty, since there was no diplomatic representative there.<sup>188</sup>

<sup>187</sup> Serial 1869, 46 Cong. 1 Sess., Sen. Ex. Doc. 2; Serial 2615, 50 Cong. 2 Sess., Sen. Misc. Doc. 58.

<sup>188</sup> Moore, Digest, I, 114-116; For. Rel., 1879, 79-86; *ibid.*, 1880, 35-36, 42-43, 51; *ibid.*, 1881, 36.

The United States withdrew its diplomatic representative from Ecuador because of the refusal of Congress, in 1876, to appropriate money to pay for a mission.<sup>189</sup> In 1881, during the period when there was no regular representative, a special agent, George E. Church, was in Ecuador, and he made a very elaborate report on the condition of the country,<sup>190</sup> but it did not result in the reestablishment of an American legation. In these circumstances news reached the Department of State, in 1884, that Julio R. Santos, a native of Ecuador but a naturalized citizen of the United States, had been arrested. Correspondence on the matter was opened with American consular officers, and the information elicited that the ground on which the arrest was made was supposed complicity with a revolutionary movement. This correspondence also developed the fact that the government of Ecuador challenged Santos' claim to American citizenship, and regarded him as a citizen of Ecuador.<sup>191</sup> The discussion over citizenship turned upon the second and third articles of the treaty of 1872 between the United States and Ecuador, which provided for naturalization and the resumption of original citizenship once more. Ecuador claimed Santos had resumed his citizenship. This the United States denied.<sup>192</sup> In consequence of

<sup>189</sup> Richardson, *Messages and Papers*, VIII, 43.

<sup>190</sup> *Ibid.*, 157; Serial 2076, 47 Cong. 2 Sess., Sen. Ex. Doc. 69.

<sup>191</sup> Serial 2403, 49 Cong. 1 Sess., H. Ex. Doc. 361.

<sup>192</sup> Malloy, *Treaties*, I, 435; Moore, *Digest*, III, 755.

this dispute, the demands of the United States were not complied with until a warship had been sent on a mission "of peace and good will,"<sup>193</sup> but with the promise of later instructions of a more vigorous character.<sup>194</sup>

After the release of Santos<sup>195</sup> matters were still in an unsatisfactory condition. He was set free under a general amnesty granted to those engaged in revolutionary activity. Release under these conditions was predicated upon the assumption that he was guilty, and might preclude a claim based upon his imprisonment. It would be difficult for a man freed on a pardon to get damages. This question, combined with the question of citizenship, made the negotiations long and difficult. It was in an effort to reach an agreement that John G. Walker, secretary of legation and consul general at Bogota, was sent as a special agent to Ecuador in 1888. He did not succeed, negotiations being protracted until after a regular minister was sent.<sup>196</sup>

While Walker was on this special mission a new difficulty arose. The Ecuadorian congress passed a law which said: "The nation is not responsible for losses and damages caused by the enemy, either in a civil or international war, or by mobs, riots, or mutinies."<sup>197</sup>

<sup>193</sup> Moore, Digest, VII, 109.

<sup>194</sup> Moore, Arbitrations, II, 1583.

<sup>195</sup> Richardson, Messages and Papers, VIII, 330-331.

<sup>196</sup> Moore, Arbitrations, II, 1587, and n. 2; Moore, Digest, V, 583.

<sup>197</sup> For. Rel., 1888, 491, 492.

The new president, Flores, who took office just after the passage of the law, requested its repeal, but the congress refused to comply with his advice. Thereupon the diplomatic corps joined in a protest against the act as contrary to the law of nations. Walker was invited to join in the protest, but declined on the ground that he was sent for one specific purpose and that his powers were limited by that fact. He did, nevertheless, informally discuss the matter with the president and other officials of Ecuador, and dwelt in these conversations upon the difficulties and dangers almost certain to arise from any attempt to enforce the law.<sup>198</sup> When the matter came to the attention of the Department of State, Walker was instructed to make a protest on the ground that "by such a declaration of rules for the guidance of her conduct in international relations, Ecuador placed herself outside the pale of international intercourse." He was directed "to say to the Ecuadorian Government that . . . the United States could never acquiesce in any attempt on the part of that Government to use such a statute as an answer to a claim which this Government had presented."<sup>199</sup>

The United States had no regular diplomatic representative in the Samoan Islands even after the agreement signed at Berlin in 1889. Therefore, when

<sup>198</sup> Walker to Bayard, Sept. 19, 1888, *For. Rel.*, 1888, 491.

<sup>199</sup> Rives, acting, to Walker, Oct. 23, 1888, *For. Rel.*, 1888, 492; and see Rives to McGarr, consul general, Oct. 24, 1888, *ibid.*, 490-491.

difficulties arose following the failure of the Samoans to elect a king peaceably, it became necessary to despatch a special agent. On April 11, 1899, Bartlett Tripp was instructed to go to the islands and act with representatives of Great Britain and Germany. The commission succeeded in restoring order and setting up a provisional government. It also made a report on the conclusions arrived at regarding a permanent form of government. In December of that year a treaty to replace the Berlin agreement was signed in Washington.<sup>200</sup>

After the Philippines were ceded to the United States following the Spanish-American War, it became necessary to make some sort of arrangement with the Sultan of Sulu in order to maintain peace. In August, 1899, Brigadier General John C. Bates negotiated an executive agreement by which the sultan recognized the sovereignty of the United States. This treaty was never "formally recognized as valid and binding," although it was lived up to by the Americans until abrogated in 1904.<sup>201</sup>

Naturally, as time went on, missions to countries where the United States had no regular representatives diminished in frequency, for the very obvious reason that the number of such countries diminished.<sup>202</sup>

<sup>200</sup> For. Rel., 1899, 614-648; Haswell, *Treaties*, II, 1595-1597.

<sup>201</sup> Fifth Annual Report of the Philippine Commission, pt. 1, 6, 11-13; Moore, *Digest*, V, 212-213; For. Rel., 1899, pt. 2.

<sup>202</sup> In June, 1904, William H. Ellis was directed to deliver to the King of Ethiopia the President's notification of his ratifica-

It is clear from the foregoing cases, however, that executive agents have frequently been sent to countries where the United States regarded the volume of business as too small to require a regular diplomatic representative. The simple exchange of the ratifications of treaties, the negotiation of changes in treaties before ratifications were exchanged, the making of treaties, the matter of claims, the protection of American interests, and investigations have been the duties commonly entrusted to special agents.

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tion of the treaty concluded the previous year, since there was no regular representative there. Instructions, June 9, 1904, MS. Domestic Letters, CCLXXV, 196; Oct. 13, 1904, MS. Inst. Consuls, CXCIH; credence, MS. Credences, VII, 649; despatches, Jan. 13, July 12, Aug. 6, 1904, MS. Misc. Letters; see also MS. Report Book, XXI, 624.



## CHAPTER XI

### AGENCIES GROWING OUT OF THE NATURE OF THE BUSINESS

Most of the agencies so far mentioned had their origin in some peculiarity of the relations between the United States and foreign countries. Because regular methods of intercourse had never been opened, were barred, or made inconvenient by some circumstance, the executive resorted to the use of agents. In many instances, however, agents have been used because the nature of the business required them, or made their use advisable.

It is not impossible to have a secret minister, but the chances of a secret being kept are much better if an agent is employed and the Senate kept out of the secret. Other types of secret business could not be done by any public official, however secret, and required an agent. Special duties occasionally require special training and aptitudes; these the minister may happen to possess, but more often it is possible to find someone who has greater experience, or unusual qualifications, and who can be employed as a special agent.

Not infrequently, especially since the United States gained recognition as a world power, international etiquette has required that ceremonial missions be sent

to represent the President at various functions. There have been other occasions when a "private" agent who held in some especial or peculiar way the confidence of the executive was used, while still others were sent "privately" to influence public opinion abroad.

And, finally, hundreds of agents have been sent by the executive to make investigations and gather information. The importance of the desired information has varied from the merest routine data to subjects of real diplomatic significance, but the agencies rest upon a common foundation.<sup>1</sup>

### I. *Secret Agents*

Contrary to general belief, the amount of "secret" service in American diplomacy is relatively small. Of course, nearly all save routine business is done without publicity, and the preliminary stages of negotiations are usually kept under cover. But the actual bulk of the "confidential file" in the Department of State is astonishingly small, considering the volume of business transacted. The inaccessibility of information from the regular files is due to considerations of international tact or courtesý, and to fear of misuse, rather than to the "secret" character of the information.

Secret diplomacy, however, bulked relatively large in Revolutionary days. There was a natural and gen-

<sup>1</sup> The classifications of this chapter are merely for convenience and clarity in exposition, and in some cases where the agent could be variously classified, the selection was, of necessity, somewhat arbitrary.

eral expectation that secrecy would continue to be the mode in later years. John Jay, whose experience during the Revolution and the Confederation had given him insight into continental practice, discussed the matter in the "Federalist." "It seldom happens in the negotiation of treaties of whatever nature but that perfect secrecy and immediate despatch are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest. . . . Those matters in which negotiations usually require the most secrecy and the most despatch, are those preparatory and auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation. For these the President will find no difficulty to provide." <sup>2</sup>

<sup>2</sup> Federalist, 403-404.

The contingent fund, from which a very large proportion of executive agents have been paid, has implicit in its very character the expectation that there is need for secret business. No other explanation is possible for the provision which appeared in the very first appropriation, allowing the President simply to state the amount of his expenditures from this fund for foreign relations without revealing either the purpose or the person to whom the money was paid.<sup>3</sup> So general has been the idea that this fund was designed for secret business that it has often been called the secret service fund.<sup>4</sup>

The element of secrecy entered into one of the first agencies of Washington's administration. When David Humphreys was sent to Lisbon, in 1790, to make arrangements for the establishment of a diplomatic officer there, and to Spain to discuss matters with Carmichael, he was instructed by Jefferson to "avoid all suspicion of being on public business." Even the two parts of his mission were to be kept distinct, the Portuguese government knowing nothing of his mission to Spain, or even, if it should prove possible, of his intending to make a journey thither.<sup>5</sup>

<sup>3</sup> Stat. at Large, I, 128.

<sup>4</sup> E. g., Forsyth, Cong. Debates, 21 Cong. 2 Sess., VII, 295; see also Seward to Sumner, Jan. 28, 1868, MS. Report Book, IX, 387.

<sup>5</sup> Jefferson to Humphreys, Aug. 11, 1790, MS. Foreign Letters, CXXI, 392-393.

Humphreys was assiduous in his efforts to live up to this injunction.<sup>6</sup>

Another occasion for secret agents occurred at the close of the War of 1812. The treaty of Ghent provided that "all territory, places and possessions whatsoever, taken by either party . . . shall be restored without delay, and without . . . carrying away . . . any slaves or other private property."<sup>7</sup> Notwithstanding this provision, the British forces took slaves with them. General Thomas Pinckney, in command in the South, was authorized to investigate the facts "through discreet agents" and to send one to the West Indies, but he was warned that the agent should be a secret one, and he was also advised that there would be more chance of success if the agency "could be covered by commercial or other pursuits of a private nature."<sup>8</sup>

Another secret agency was that of Alexander McRae, in 1823.<sup>9</sup> The United States was jealously watching the tentative moves in the direction of European intervention in South America. The interference of the powers in the domestic concerns of European countries, particularly Spain, did not furnish ground for optimism. The United States had recog-

<sup>6</sup> MS. Desp. Portugal, III, *passim*.

<sup>7</sup> Art. I, Haswell, *Treaties*, 400.

<sup>8</sup> Monroe to Pinckney, April 6, 1815, MS. Inst. Sp. Miss., III, 286-290; see also *id.* to *id.*, July 17, 1815, *ibid.*, 294-299; Monroe to Spalding, July 18, 1815, *ibid.*, 299-302; above, 542, 545.

<sup>9</sup> Above, 572-574.

nized the independence of the states to the south, and the attitude of Europe appeared more menacing to their independence. It seemed out of the question that any conference would take an attitude favorable to independence. Under these conditions there was no motive for participation, but there was every reason for observation.<sup>10</sup> The only possible course was to send a man secretly who should pick up what news he could. McRae's instructions were explicit: "You will assume no public character, but take passports as a private citizen of the United States. . . . And you will take all proper precautions for avoiding any appearance or suspicion of your being employed on a public agency."<sup>11</sup> Since no conference was held, McRae's commission was recalled August 6, 1824. However, he continued to report on conditions in Europe and the attitude toward South America until the end of the following year.<sup>12</sup>

In the same year Condly Raguet was given a secret agency in addition to a consular office. Early in 1822 he had been regularly nominated and appointed consul at Rio de Janeiro. The emoluments of the post were unsatisfactory and he threatened to resign. In July, 1823, he was given a separate appointment as "agent of the United States for commercial affairs in Brazil." This agency was "entirely distinct" from the office of

<sup>10</sup> See J. Q. Adams, *Memoirs*, VI, 178 ff.

<sup>11</sup> Adams to McRae, Dec. 15, 1823, MS. Inst. Sp. Miss., I. 25-26; Moore, *Digest*, VI, 404.

<sup>12</sup> MS. Special Agent Bundle.

consul and was to be secret in character. Even the government of Brazil was to remain ignorant of it; all his communications "with the existing government at Rio" were to be in his "consular capacity and no other." This combination of functions was very unusual and had been delayed because of doubts of the propriety of uniting an informal agency with a regular office. It was done, apparently, from two motives: first, to secure secrecy; and second, to provide a better salary—for the agency paid forty-five hundred dollars a year, while the returns from the consulate were much less.<sup>13</sup>

In 1825 it was desired to send a secret agent to Cuba to report on the possibilities of attack from abroad as well as upon the internal difficulties. The motive for the employment of a secret agent was to make it possible for the agent "to penetrate the views and designs of parties and persons."<sup>14</sup> The position was offered to Thomas Bolling Robertson, a judge of the federal court, but was declined as unworthy. "I cannot, though sinking under a long and protracted disease, and standing probably upon the verge of existence, consent to place myself in a place of doubt-

<sup>13</sup> Adams to Raguet, April 4, Dec. 6, 1822, July 22, 1823, Nov. 29, 1824, MS. Desp. to Consuls, II, 254, 271, 294, 339; Clay to Raguet, April 14, 15, 1825, MS. Inst. U. S. Mins., X, 266 ff., 271-276; Raguet's despatches, MS. Consular Desp. Rio de Janeiro, I, II; MS. Desp. Brazil, V, VI.

<sup>14</sup> Clay to Robertson, Dec. 7, 1825, MS. Inst. U. S. Mins., XI, 418-420.



ful respectability.”<sup>15</sup> As a result no agent was sent until 1827, when another man, also upon the verge of existence, was despatched.

The situation in Cuba had not improved. Mexico and Colombia were still thought likely to invade the island. Beside, Adams had reason to entertain suspicions that Canning, the British foreign minister, had designs of his own. Nervousness was steadily increasing; consequently, it was more and more desirable to gain definite information. The man selected was Daniel Pope Cook, of Illinois. The choice was a good one. Cook, though still a young man, had had a good deal of experience in the House of Representatives, was well connected, and a firm friend of Adams. He was clear-headed and upright. Furthermore, being ill, he had already announced his intention of going to Cuba in search of health. That intention being known, his departure would not raise any suspicions that he was on a mission for the Department of State, and he might hope to work quietly in Havana without detection. His mission was not to be kept a secret from the Spanish authorities. He was given a confidential letter from Clay to Governor Vives, with whom he was to discuss the defensibility of Cuba and the means of resistance which the Spanish authorities had at their disposal. Cook arrived at Havana in April, 1827, and immediately got in touch with the

<sup>15</sup> Robertson to Clay, Jan. 19, 1826, MS. Special Agent Bundle.

Cuban officials. However, poor health forced him to leave after he had been in the city a month.<sup>16</sup>

In the same year a secret mission to the West Indies grew out of the desire of the United States to be allowed to trade freely in that quarter. The West Indian trade had been one of the most lucrative in colonial days, and when the United States found itself virtually excluded by the fact of independence, the loss was a severe one. Efforts to secure the privilege of direct trade were begun during Washington's administration, but they were not successful. Jay's treaty secured some concessions, but on terms so onerous that the Senate threw out the article. When the treaty of Ghent was framed, a fresh effort was made, but it met with failure, as did the negotiations of Rush and Gallatin in 1818. The Monroe administration resorted to retaliatory measures. American ports were closed to British ships from ports not regularly open to American vessels, and British ships leaving American waters were required to give bond not to go to such ports. This move brought a good deal of pressure to bear, for it cut off from easy access the best market for West Indian sugar. There followed a series of concessions on both sides.

In 1825 Great Britain, by a group of acts of Parliament, made a proposition which was general in terms, applying to all nations. It provided that the British

<sup>16</sup> J. Q. Adams, *Memoirs*, VIII, 20-21; Clay to Cook, March 12, 1827, MS. Inst. U. S. Mins., XI, 267; despatches, March 12, 16, Nov. 1, 1827, MS. Special Agent Bundle.

colonial trade should be opened to all countries which opened their colonial trade on the same terms to Great Britain. The United States had no colonies, and the proposition appeared to affect this country unequally. The acts of the British Parliament were very complicated,—so involved that a British court misinterpreted their meaning. Furthermore, the acts appeared to contemplate an exception in favor of the United States, pending negotiations. There was honest misapprehension of their meaning and of the intentions of the British government in the United States, which failed to comply with the terms of the acts.<sup>17</sup> In addition to the misunderstandings growing out of these facts, irritation was caused in England by what seemed to be a claim upon the part of the United States, voiced in Congress and in diplomatic interchanges, to participate in the trade as a matter of right. The American government appeared to claim that Great Britain did not have a free hand in the disposal of its colonial trade.<sup>18</sup> The rising protectionist spirit in the United States and a sudden setback to the more liberal colonial policy which had been inaugurated in Great Britain made the problem more thorny still.

The result was that the ports of the West Indies were again closed to American shipping, July 27, 1826. When Gallatin, who was minister to England, moved

<sup>17</sup> British and Foreign State Papers, XIV, 489.

<sup>18</sup> British and Foreign State Papers, XIV, 462-499, *passim*; The Cambridge History of British Foreign Policy, ed. A. W. Ward and G. P. Gooch (New York, 1923), II, 233.

for modification, Canning virtually refused to negotiate, treating the matter as a closed issue. Adams did not regard it in the same light. He was determined that the United States should not be placed in the position of soliciting a "gratuitous favor," or of accepting "as the grant of a favor that for which an ample equivalent is exacted."<sup>19</sup> He desired, therefore, data which would show conclusively the benefits which the British West Indies would derive from the trade. This he conceived could be achieved by an investigation of many questions, which, after detailing several, he finally summarized as follows: "And, generally, any information to show the degree of dependence of the British West Indies on the United States, for articles of necessary consumption; the ability of those islands to find substitutes in other countries, or within themselves for the objects of commerce obtained from the United States; and the probability of a continuation of the existing British interdict of the vessels of the United States from the West Indian ports; and, also, whether it is likely that the circuitous trade between the United States and the British West Indies will be tolerated or prohibited."

This was a large order for diplomatic ammunition, and it needed an experienced man to undertake to fulfil it. Robert M. Harrison was chosen. At this time he was consul at St. Bartholomew, but during the previous ten years he had also served at St. Thomas, St. Christopher, and Antigua. It was essential, too, that the

<sup>19</sup> Richardson, *Messages and Papers*, II, 383.

mission be accomplished without "noise or parade." If the British government knew that such an investigation was on foot, its value would be largely negated. Harrison was enjoined, therefore, to keep the whole mission strictly secret.<sup>20</sup>

Practically all the approaches to Turkey, between 1820 and the final negotiation of a treaty, were made through secret agents.<sup>21</sup> George B. English, who was sent in 1823, was overjoyed at getting a copy of the Turkish treaty with France "quietly and without observation,"<sup>22</sup> and refrained from attempting to get certain others because such an attempt would "rouse suspicion."<sup>23</sup> His dealings with the Turkish grand admiral were all cloaked in profound secrecy.<sup>24</sup> He wore "an oriental dress" and sought to be regarded by the Turks as "an American Mussulman who has come from a far distant country to visit the capital of Islam."<sup>25</sup> English, indeed, comes as close as any special agent to the popular conception of a diplomatic spy—disguise and all!

<sup>20</sup> Clay to Harrison, May 14, 1827, MS. Desp. to Consuls, II, 423; see *ibid.*, 437-438; report, MS. Special Agent Bundle. Letters from Harrison may be found in the consular despatches of the places visited: Barbados, Demerara, Jamaica.

<sup>21</sup> Above, 319-334.

<sup>22</sup> English to Adams, Aug. 6, 1823, Serial 221, Doc. 250, 12-13.

<sup>23</sup> *Id.* to *id.*, Dec. 27, 1823, Serial 221, Doc. 250.

<sup>24</sup> *Id.* to *id.*, Feb. 8, 1824, Serial 221, Doc. 250.

<sup>25</sup> *Id.* to *id.*, Dec. 27, 1823, unprinted portion, MS. Inst. Turkey, I, 80-84.

When, two years later, Commodore John Rodgers was instructed to meet and discuss matters with the Capudan Pasha, the instructions were carefully marked "secret." It was designed that the meeting should take place, if not in mid-ocean, at least at some spot where it would not be detected, and all reports of the matter were to be sent to the department "with every precaution of secrecy."<sup>26</sup> Rodgers faithfully observed the injunction. His activities were watched, and all sorts of rumors floated about, but his real mission went quite undetected.<sup>27</sup>

The reports of all the agents charged with preliminary investigations emphasized the importance of secrecy. Constantinople was the home of intrigue; and the situation there changed with such kaleidoscopic swiftness that the person to whose interest it was to keep a secret one day, found it of advantage to reveal it almost the next. When, therefore, actual negotiations were undertaken, in 1828, the efforts for secrecy were redoubled. The Secretary of State was away from Washington, and no one else in the department was taken into confidence. Instead, President Adams drafted the instructions to Crane and Offley with his own hand, marking them "secret and confidential," and closed them with the remark that "as the success of this measure may depend upon the secrecy with which it will be managed, you will use every

<sup>26</sup> Adams to Rodgers, Feb. 7, 1825, MS. Inst. Turkey, I, 108-110.

<sup>27</sup> Paullin, Commodore John Rodgers, 340.



proper precaution for observing it.”<sup>28</sup> Edward Wyer, in whom Adams had implicit confidence, was made bearer of despatches and secretary of the mission, and secretly smuggled aboard the *Fairfield*.

The negotiation of a treaty involved presents and, consequently, money. Adams, therefore, wrote with his own hand a “secret and confidential” memorandum to Secretary of the Navy Southard transferring twenty thousand dollars from the fund for contingent expenses of foreign intercourse to the navy funds, and Southard notified the navy agent at Gibraltar, also under seal of secrecy, to honor Crane’s drafts without requiring them to be in the usual form or to state the object for which the money was to be used—a point upon which Southard did not give the agent any light.<sup>29</sup> Finally, in order to avoid suspicion, only one of the commissioners, David Offley, was to go to Constantinople in the first instance. He had been there frequently before, and his presence would not excite surprise or arouse suspicion. Only after the negotiation was well advanced to success was he to summon Commodore Crane.<sup>30</sup>

As time went on secrecy was at once more difficult to obtain and more necessary. It could no longer be disguised that the United States desired a treaty with the Porte, and whatever nations had a motive for

<sup>28</sup> Adams to Offley, July 21, 1828, MS. Inst. Turkey, I, 94-96; also Adams to Crane, July 22, 1828, *ibid.*, 96-98.

<sup>29</sup> MS. Inst. Turkey, I, 99-100, 101, 102.

<sup>30</sup> Adams to Offley, *loc. cit.*



jealousy and opposition had been put upon their guard. "Some of the European governments, none of whom dislike to monopolize power and commerce, might not be pleased to see Jonathan's long sickle thrust into the golden harvests that grow on the borders of the Euxine, and might possibly use some little artifices to prevent it."<sup>31</sup> This had happened before, and it was recognized in the instructions furnished to Rhind, Offley, and Biddle that it might happen again. For the second time it was provided, therefore, that only one of the commissioners should go to Constantinople. Rhind was selected, because Offley's connection with the effort for a treaty was well known, and a naval officer could not go to the Turkish capital as unobtrusively as was deemed necessary.<sup>32</sup> Many of the same precautions were adopted that had been employed in the previous mission, and Rhind embarked secretly as had Wyer the year before.<sup>33</sup> But more people were let into the secret, among them the Russian minister, and before Rhind had gone far with the negotiation, he found that the news had leaked out, and his efforts were seriously embarrassed.

Precisely the same motives led to secrecy in the negotiations of Edmund Roberts in the Far East.<sup>34</sup> Other

<sup>31</sup> Forsyth in debate on this negotiation, Cong. Debates, 21 Cong. 2 Sess., VII, 301.

<sup>32</sup> Van Buren to Rhind, Offley, and Biddle, Sept. 12, 1829, MS. Inst. Turkey, I, 196-202.

<sup>33</sup> MS. Inst. Turkey, I, 203-204, 204-205; Rhind to Van Buren, Oct. 20, 1829, *ibid.*, 149.

<sup>34</sup> Above, 335-339.

powers had made treaties with some of the nations with which the United States most desired to effect commercial arrangements, and it was feared that some of them might think it to their interest to balk the efforts of an American agent. When he was summoned to Washington, Roberts was told to keep the matter secret.<sup>35</sup> When he went out on the sloop of war *Peacock*, in 1832, he was rated as "captain's clerk," Captain Geisinger being the only other person on board who knew his real status.<sup>36</sup> Of course, after his arrival upon the scene of action it was not possible to keep the mission a secret; and far from being a captain's clerk, he was regarded by the governments to whom he was sent as an ambassador.<sup>37</sup>

Another similar agency was that of William B. Hodgson to Egypt, late in 1833.<sup>38</sup> Because it was not known how much independent authority the pasha had, and because the United States wanted to avoid becoming embroiled with the Porte, it was deemed essential that Hodgson keep his mission strictly secret. There were, in addition to these motives for secrecy,

<sup>35</sup> Livingston to Woodbury, Jan. 3, 1832, MS. Inst. Sp. Miss., I, 73.

<sup>36</sup> Livingston to Roberts, Jan. 27, 1832, MS. Inst. Sp. Miss., I, 73-75.

<sup>37</sup> Roberts, Embassy to Eastern Courts, 430; Roberts to Secretary of State, June 10, 1834, Serial 272, 23 Cong. 2 Sess., H. Doc. 44.

<sup>38</sup> Above, 556-558.

others which had been operative in the tentative moves toward treaty relations with the Turkish Empire.<sup>39</sup>

Occasionally the government to which an agent is sent has reasons of its own for suggesting that the mission be kept secret. A clear case of an agency kept secret because of the desire of a foreign power is the mission of Tully R. Wise to Cuba, in 1842.<sup>40</sup> His errand was in connection with certain payments due from Spain to the United States in fulfilment of treaty stipulations. There was no doubt that Spain was sincerely desirous of meeting its obligations, but it was overwhelmed with difficulties. The government of Spain, therefore, "requested and enjoined secrecy upon the transaction."<sup>41</sup>

There are, of course, different kinds and degrees of secrecy. A mission may be secret in the sense that the purpose for which a man is sent is kept from the jurisdiction into which he is sent; his work may be known only to the government to which he is despatched; or his work may be quite open and the secrecy may consist in concealing his connection with the American government. It was this last type of secrecy which attended Duff Green's mission in England in 1843.<sup>42</sup> His presence in England was very

<sup>39</sup> McLane to Hodgson, Oct. 10, 1833, MS. Inst. Sp. Miss., I, 103-106.

<sup>40</sup> Above, 559-560.

<sup>41</sup> Webster to Wise, Feb. 15, 1842, MS. Inst. Sp. Miss., I, 181-186.

<sup>42</sup> Below, 774-775, 809-811.

conspicuous, for he wrote letters to the *Times* over his own signature, and he talked with leading men of the Peel ministry and of the opposition about matters which concerned the relations of Great Britain and the United States. But every effort was made to conceal his connection with the Tyler administration. When a letter from him was used as the basis of an instruction to William S. Murphy, minister to Texas, Green's identity and his position as agent were concealed under the phrase, "a private letter from a citizen of Maryland then in London."<sup>43</sup>

The Senate displayed a good deal of curiosity about the identity of the citizen of Maryland. Benton introduced a resolution to have the individual summoned to the bar of the Senate.<sup>44</sup> On May 28, 1844, the Senate made its first inquiry, but Calhoun, who must have been in possession of the facts, appealed to the "files" and reported that "after diligent inquiry, no letter of the character referred to can be found on the files of this department, nor any evidence that such has ever been placed on them." He was "unable to ascertain the name of the writer in question from any documents in the possession of the department"; he presumed "that the letter . . . being '*private*' is amongst the private papers of the late Mr. Upshur."<sup>45</sup>

<sup>43</sup> Serial 444, 28 Cong. 1 Sess., H. Doc. 271, 18; Aug. 8, 1843, MS. Inst. Texas, I.

<sup>44</sup> Benton, *Thirty Years' View*, II, 605; May 13, 1844, Sen. Ex. Jol., VI; May 16, 1844, MS. Report Book, VI, 102.

<sup>45</sup> Serial 444, Doc. 271, 98-99; Sen. Ex. Jol., VI; June 3, 1844, MS. Report Book, VI, 107.

A second attempt was made by the Senate, when by resolution of June 7, 1844, it inquired "whether Mr. Duff Green was employed by the executive government in Europe during the year 1843." Calhoun again appealed to the mute files and reported that there was "no communication whatever, either to or from Mr. Green, in relation to the annexation of Texas, to be found on the files of the Department."<sup>46</sup>

Both of Calhoun's replies probably were truthful, but they were not the whole truth; they were designed to conceal the facts for which the Senate was seeking. It was not to be balked. By a resolution adopted in executive session, June 12, 1844, the Senate inquired of President Tyler whether Duff Green had received any money "out of the Treasury of the United States, or out of the contingent fund for foreign intercourse, for services rendered since the 4th day of March, 1841." Tyler replied June 17, and made a virtue of his necessities by declaring that "although the contingent fund for foreign intercourse has for all time been placed at the disposal of the President, to be expended for the purposes contemplated by the fund without any requisition upon him for a disclosure of the names of persons employed by him, the objects of their employment, or the amount paid to any particular person, and although such disclosures might in many cases disappoint the objects contemplated by the appropriation of that fund, yet in this particular instance I feel no

<sup>46</sup> Serial 444, Doc. 271, 101; Sen. Ex. Jol., VI; June 8, 1844, MS. Report Book, VI, 110.

desire to withhold the fact that Mr. Duff Green was employed by the Executive to collect such information, from private or other sources, as was deemed important to assist the Executive in undertaking a negotiation then contemplated, but afterwards abandoned.”<sup>47</sup>

There is an element of humor in the bland statement that he had no hesitation in telling what the Senate had for months been trying to find out, and what the Secretary of State had shown a good deal of ingenuity in concealing. The motives for all this secrecy are transparent. It would have made trouble with Everett, behind whose back Green had been working. It would have lent color to the charge of a “plot” in the effort to annex Texas. It was kept secret as long as possible. Meanwhile the situation had altered. The proposed free trade treaty with England had been abandoned, and the Senate had rejected the treaty for the annexation of Texas.<sup>48</sup> Only when no particular damage could come from the revelation was Green’s agency admitted. Even then the administration did not identify him with the citizen of Maryland, admitting only his employment, not his authorship of the letter in question.

Another agency, which was also involved in the Texas question, was swathed in much the same sort of secrecy. In the middle of April, 1844, Gilbert L.

<sup>47</sup> Richardson, Messages and Papers, IV, 328; Sen. Ex. Jol., VI; MS. Report Book, VI, 113.

<sup>48</sup> Sen. Ex. Jol., VI, 311-312.

Thompson was sent to Mexico, at almost the same moment that the treaty for the annexation of Texas was submitted to the Senate.<sup>49</sup> Rumor quickly spread to the effect that he had been sent to Mexico to obtain its consent to the treaty of annexation, and before Thompson reached Vera Cruz the Senate adopted a resolution inquiring into the truth of the rumor. Again the Senate was told part of the truth to conceal the rest. Tyler replied that "no messenger has been sent to Mexico in order to obtain her assent to the treaty with Texas, it not being regarded by the Executive as in any degree requisite to obtain such consent in order . . . to perfect the title of the United States to the territory thus acquired." He admitted that a messenger had been sent, but intimated that his whole duty was to deliver to the chargé, Benjamin E. Green, an instruction which had already been confidentially communicated to the Senate.<sup>50</sup> It was true that he bore an instruction to Green, but Tyler did not inform the Senate that Green had been directed to act in consultation with Thompson, or that Thompson was also charged with some independent negotiations with Santa Anna, which he undertook before going to Mexico City at all.<sup>51</sup>

<sup>49</sup> For the date of his starting, see Smith, *Annexation of Texas*, 199. The message submitting the treaty was dated April 22, 1844, and was read in the Senate the same day. *Sen. Ex. Jol.*, VI, 257-258.

<sup>50</sup> Richardson, *Messages and Papers*, IV, 318.

<sup>51</sup> Smith, *Annexation of Texas*, 288, 289; see Green to Calhoun, May 30, 1844, *MS. Desp. Mexico*, XII; Texan chargé to Texan



As the relations of the United States and Mexico became more and more strained, and the signs multiplied that war was likely to come, Polk became more and more anxious about California. The desire to possess California was by no means new; nor was the fear that Great Britain or some other power would get it.<sup>52</sup> One factor was working in favor of the United States—time. If matters would wait upon immigrants, the question would really solve itself. But as war approached, it seemed not impossible that Mexico would cede the province to Great Britain. This fear was heightened by a report from the American consul at Monterey, Thomas O. Larkin, dated July 10, 1845, which asserted that England had such designs.<sup>53</sup> During the previous month, a report from a secret agent in Texas had also given explicit warning: "Look well to one probable result if Mexico declares war. Before the fact is known she will have transferred to England California and the Bay of San Francisco. The argument for this act will be the utter impossibility on the part of Mexico to defend it, or prevent its falling into the hands of the United States. To obtain this transfer even upon a secret

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secretary of state, June 18, 1844, Garrison, "Texan Diplomatic Correspondence," pt. 2, 287-288. There are only three despatches from Thompson on file: May 2, 4, 6, 1844, MS. Special Agent Bundle.

<sup>52</sup> Smith, *War with Mexico*, I, 324.

<sup>53</sup> Buchanan to Larkin. Oct. 17, 1845, MS. Inst. Sp. Miss., I, 230-234; Smith, *Annexation of Texas*, 325; Reeves, *Diplomacy under Tyler and Polk*, 278.

engagement to restore it (which will never be complied with) I have no doubt that all which English diplomacy can do will be done to provoke a war between the United States and Mexico.”<sup>54</sup>

Polk faced the question as to what practical steps could be taken to forestall British or French aggression without involving the United States in war. His decision was characteristic, and demonstrated once more the soundness of Benton's comment that it would be difficult to conceive a man less warlike or more intriguing. He decided to use secret agents. The first was already on the ground, Thomas O. Larkin. Polk resorted to the same plan which had been used in the case of Condé Ragué in Brazil more than twenty years before—he combined in one individual the office of consul and an employment as secret agent.

The instructions sent Larkin are eloquent with the theory of political gravitation. Manifest destiny is implicit in every sentence. Nothing which traverses the idea is said without reservation. Reasons why Britain or France must not be allowed to achieve annexation are multiplied. First, “the interests of our commerce and our whale fisheries demand that you should exert the greatest vigilance in discovering and defeating any attempt which may be made by foreign governments to acquire a control over that country.” Next, the Monroe Doctrine is invoked: the President

<sup>54</sup> Wickliffe to Buchanan, May 30, 1845, misdated April 3, received June 15, MS. Special Agent Bundle.

"could not view with indifference the transfer of California to Great Britain or any other European power. The system of colonization of foreign monarchies on the North American continent must and will be resisted by the United States. It could result in nothing but evil to the colonists under their dominion who would naturally desire to secure for themselves the blessings of liberty by means of republican institutions." Finally, it would fail, in the long run, to "benefit such foreign monarchies. . . . Great Britain, by the acquisition of California, would sow the seeds of future war and disaster for herself; because there is no political truth more certain than that this fine province could not long be held in vassalage by any European power. The emigration to it of people from the United States would soon render this impossible."

Perfect confidence was felt that, as soon as it was ripe, political gravity would drop California into the lap of the United States. No pressure was to be put upon California; it was to have no clandestine aid. "In the contest between Mexico and California, we can take no part, unless the former should commence hostilities against the United States; but should California assert and maintain her independence, we shall render her all the kind offices in our power, as a sister Republic. This Government has no ambitious aspirations to gratify, and no desire to extend our federal system over more territory than we already possess, unless by the free and spontaneous wish of the inde-

pendent people of adjoining territories." The "true policy," both from the point of view of the United States and of the Californians, "is to let events take their course, unless an attempt should be made to transfer them without consent either to Great Britain or France."<sup>55</sup>

Larkin was to propagate these ideas secretly, and not to allow the political phase of his work to become evident. Extraordinary care was taken to protect his instructions from publicity in course of transmission. One copy was committed to Lieutenant Archibald H. Gillespie, of the marine corps, who was also in the President's confidence, and who was to "coöperate as a confidential agent" with Larkin.<sup>56</sup> Gillespie had a perilous trip through Mexico, being forced to destroy all his papers. He did not reach Monterey until April, 1846, having been compelled to travel via the Hawaiian Islands. Larkin's instructions reached him, therefore, in verbal form.<sup>57</sup> As not infrequently happened, the Senate got wind of the matter about two years later, and made an embarrassing call for papers, which Polk finally transmitted under seal of secrecy in order to block off the assertions of the opposition in Congress that the letter to Larkin "contained instructions to

<sup>55</sup> Buchanan to Larkin, *loc. cit.*

<sup>56</sup> *Ibid.*

<sup>57</sup> Reeves, *Diplomacy under Tyler and Polk*, 278-279; Smith, *Annexation of Texas*, 325, 329; Larkin's despatches, MS. Consular Letters, Monterey, I; see further instructions, Jan. 13, 1847, MS. Desp. to Consuls, XI.

produce a revolution in California before Mexico commenced the war against the United States, and that Col. Fremont had the authority to make the revolution.”<sup>58</sup>

The fear of Great Britain and France which led Polk to charge Larkin and Gillespie with secret missions designed to counteract “foreign propaganda” in California, led also to sending a secret agent to Texas. Tyler’s administration had jammed through the resolution for annexing Texas, collecting most of the credit to itself and leaving most of the difficulties for Polk. The difficulties were serious. While the mass of the people in Texas wanted annexation, official circles were no longer so cordial to the idea. Houston had given clear warning earlier that if the treaty failed, the annexation movement would die with it. The new president, Jones, was even more soured by the treatment accorded Texas by the United States, and more enamoured of the idea of independence. If they had been the only factors to consider, Polk would have had yet more serious difficulties, for the joint resolution method of annexation was not at all palatable, since it estopped Texas from negotiating and laying down conditions. But there was an added factor of great importance. Great Britain and France were making a last effort to secure the assent of Mexico to Texan independence, asking from Texas, in return, that it should remain independent. During

<sup>58</sup> Polk, *Diary*, III, 395, 399; Richardson, *Messages and Papers*, IV, 578.

the last days of March, 1845, an agreement was reached by which Texas accepted the intervention of France and England, with a view to the realization of the European plan for an independent Texas.

Polk did not know the details of these machinations, but he had "learned . . . that the governments of Great Britain and France are exerting themselves in concert through their public ministers in Texas, to defeat the reunion of that republic with the United States." Andrew J. Donelson, the American minister, was doing what he could to combat their efforts, but it seemed likely that a secret agent could find out more, and more effectively counteract them. For that reason Charles A. Wickliffe, who had just retired from the position of Postmaster General, was sent to hear, observe, and report, as well as to "use such arguments on the proper occasions and to the proper persons, as you may deem best adapted to convince the authorities and people of Texas that their reunion with the United States, will secure and promote their own best interests and those of their posterity. Under the broad banner of the Union they will be relieved from foreign influence, which now threatens to distract and divide them, . . . their peculiar institutions will be protected against the attacks of English and French fanatics; the emigration of their brethren from the United States will be greatly enhanced, and the blessings of liberty and free government will be permanently secured to them. . . . These and similar topics which will readily suggest themselves to your experi-

enced and well-informed mind, you will not fail to press upon suitable occasions; knowing that the United States have nothing to oppose to the machinations and influence of Great Britain and France except arguments founded on truth and justice.”<sup>59</sup>

While he was sending secret agents to Texas and California, Polk was resorting to their use in Mexico also. In the course of a little over two years at least three were sent. Polk was scarcely in office before relations between the United States and Mexico were broken. His peace policy demanded their restoration, but his policy of strong dealing required that the restoration should be accomplished without any concessions to Mexico, even in the matter of dignity. It would not do to send an avowed agent who might be euchred into the attitude of a suppliant. Tentative moves should be made by a man whose advances could be disavowed if unsuccessful. William S. Parrott<sup>60</sup> was expected “to reach the President and other high officers of the Mexican government and especially the minister of foreign affairs, and by every honorable effort [seek] to convince them that it is the true interest of their country, as it certainly is, to restore friendly relations between the two republics.” This he was to do on his own responsibility; only when he

<sup>59</sup> Buchanan to Wickliffe, March 27, 1845, MS. Inst. Sp. Miss., I, 213-215; despatches from Wickliffe, April 15, May 26, 30 (dated April 3), June 13, July 5, 28, 1845, MS. Special Agent Bundle.

<sup>60</sup> Above, 372-373



should "clearly ascertain that they are willing to renew our diplomatic intercourse, then and not till then you are at liberty to communicate to them your official character, and to state that the United States will send a minister to Mexico as soon as they receive authentic information that he will be kindly received."<sup>61</sup> Secrecy was necessary to protect the dignity of the American government.

The secret agent sent to Mexico the following year had an additional motive beyond that operative in Parrott's case, the protection of his own life. War with Mexico had broken out, and Polk had in mind its termination almost before hostilities were fairly started. Moses Y. Beach<sup>62</sup> went to Mexico not as an avowed agent but under positive injunction "never to give the slightest intimation, directly or indirectly, that you are an agent of this government" except under very special circumstances when it might "smooth the way to peace."<sup>63</sup> He made every effort to keep his connection with the American government concealed, travelling, for instance, on a British passport, but even so did not arrive without suspicion being cast upon him.<sup>64</sup>

The mission of Nicholas P. Trist, who negotiated the treaty of Guadalupe Hidalgo, was also intended

<sup>61</sup> Buchanan to Parrott, March 28, 1845, Buchanan, Works, VI, 133-134.

<sup>62</sup> Above, 392-393.

<sup>63</sup> Buchanan to Beach, Nov. 21, 1846, MS. Inst. Sp. Miss., I, 257-258.

<sup>64</sup> Smith, War with Mexico, II, 11-12.

to remain secret.<sup>65</sup> Polk got news of the capture of Vera Cruz and of San Juan de Ulloa, April 10, 1847. The matter of peace maneuvers was immediately taken into consideration by the President and his cabinet officers, and Trist was selected for the mission. Polk called Trist to the White House, and then recorded in his diary: "I . . . charged him to keep the matter a profound secret." Polk insisted at first that "no clerk or other person in his Department should have any knowledge of it," only reluctantly agreeing to let one veteran of the staff into the secret, and then only after the clerk had been brought in person before him and "placed under the strictest injunctions of secrecy." The motives for this elaborate secrecy were partly political. "To give publicity to such a movement before it was commenced, and to have the federal papers giving their own version of it, and, as their habit is, to have them by every means in their power thwarting the objects of the Government by discouraging the enemy to accede to the measure, would in all probability be to defeat it." Hence the necessity of secrecy.<sup>66</sup>

There was also a diplomatic motive for secrecy. A public mission might impair the dignity of the United States. "After so many overtures rejected by Mexico, this course might not only subject the United States to the indignity of another refusal, but might, in the end prove prejudicial to the cause of peace. The

<sup>65</sup> Above, 396-398.

<sup>66</sup> Polk, *Diary*, II, 465-466; see *ibid.*, 471.

Mexican government might thus be encouraged in the mistaken opinion which it probably already entertains, respecting the motives which have actuated the President in his repeated efforts to terminate the war. He deems it proper, notwithstanding, to send to the headquarters of the army a confidential agent, fully acquainted with the views of this government and clothed with full powers to conclude a treaty of peace. . . . In this manner he will be enabled to take advantage, at the propitious moment, of any favorable circumstances which might dispose the government to peace.”<sup>67</sup> Just as Polk was persuaded that Trist had gotten off in profound secrecy, two papers, the *New York Herald* and the *Boston Post*, disclosed “with remarkable accuracy and particularly” the facts with regard to Trist’s mission.<sup>68</sup> It was only the first of many irritations and disappointments which the mission was to cause.

Polk moved constantly with a vision of British “machinations” before his eyes. British intrigue was, indeed, perpetually in the eyes of American statesmen in the middle of the century, without distinction of party. When the Democrats retired with Polk, worry over Britain and its schemes still haunted the Department of State. In 1845 it seemed as though the mistress of the seas was casting too covetous glances at San Francisco Bay. In 1849 it was Samana Bay.

<sup>67</sup> Buchanan to Trist, April 15, 1847, Serial 509, 30 Cong. 1 Sess., Sen. Ex. Doc. 52, 81; in full, MS. Inst. Mexico, XVI, 46-54.

<sup>68</sup> Polk, Diary, II, 482.

Clayton had information that a British commissioner was in the Dominican Republic seeking to obtain Samana. Benjamin E. Green, the son of Duff, was sent as a secret agent to discover the truth regarding the report and to sound the Dominican authorities with a view to the acquisition of Samana Bay by the United States.<sup>69</sup> He was to conceal his character even from the minister of foreign affairs unless it was necessary to present the letter of introduction which he carried in order to acquire the desired information.

The attitude toward Great Britain is clearly revealed in one passage of Green's instructions, which declared: "A grant of sovereign rights to Great Britain in that quarter would be fraught with numberless and incurable ills to the Dominican Republic."<sup>70</sup> Green had the same sort of task as Larkin, Gillespie, and Wickliffe, and the motives for secrecy were the same.

In addition to his function in blocking British designs, Green had another duty. He was to investigate the situation with a view to advising the administration whether the time was ripe for recognition and the negotiation of a treaty. The motives for secrecy concerning this phase of his mission were different. Within a very brief period there had been two other similar investigations—one by Lieutenant D. D. Porter, in 1846, and another by John B. Hogan, the year previous. It was felt to be proper to keep the investi-

<sup>69</sup> Above, 446-450.

<sup>70</sup> Clayton to Green, June 13, 1849, MS. Inst. Sp. Miss., I, 280-289.

gation secret so as not "again to excite, on the part of the Dominicans hopes or expectations, which might not be realized."<sup>71</sup>

Green had also another duty to perform before his mission terminated. He was to proceed to Haiti and there take up certain matters regarding claims of American citizens. The claims, for the most part, were of long standing, and were believed by the Department of State to be justified. The difficulty came over the matter of recognition, and Clayton told Green that "the aggrieved parties . . . can never hope for redress without a resort to force, so long as this government may deem it expedient to adhere to the punctilio in regard to recognizing that of Haiti which has hitherto been paramount in our councils." Clayton proposed to waive punctilio in the hope "that the Haitian government would be satisfied with a partial recognition." Green, therefore, was to sound the Haitian authorities on this subject without allowing it to be known that he was an agent of the American government. Only in case a satisfactory answer were made was he to divulge his semiofficial character and to offer to enter into negotiation on the matter of claims. The motive for secrecy in this phase of his mission was quite different from the motive in the other parts of his task. He was to conceal his char-

<sup>71</sup> Green to Clayton, Sept. 27, 1849, Serial 694, Doc. 12, 4. "Should I make myself known, and afterwards go away without recognizing them, the effect would be to discourage [these] people, and give confidence to their enemies." Id. to id., Oct. 6, 1849, *ibid.*, 8.

acter in order to preserve the dignity of the home government.<sup>72</sup>

Another mission in the same year had certain elements in common with that just described. Green was a secret agent with a full power to negotiate with a hitherto unrecognized state if the situation was propitious. A. Dudley Mann was sent to Hungary in much the same way.<sup>73</sup> The motives for secrecy, however, were somewhat more powerful. Hungary was not as old a state as either of the republics on Hispaniola; it was, indeed, only in process of formation. Whether it would be successfully formed or whether it would fail were still unsettled questions. The indications pointed to failure, rather than success. But if there was a development in the situation which gave a clear prospect of success, Taylor and Clayton wanted to have the moral force of the United States arrayed on the side of republican Hungary, and against the "autocrats." It would, on the other hand, be folly to invite gratuitously the hostility of the great powers of Europe. For this reason it was desirable that the agent to Hungary should go secretly and never reveal his character if Kossuth and his compatriots were defeated.<sup>74</sup>

The secret character of this mission precipitated the famous Hülsemann-Webster correspondence. Hülse-

<sup>72</sup> Clayton to Green, loc. cit.

<sup>73</sup> Above, 462-464.

<sup>74</sup> Clayton to Mann, June 18, 1849, MS. Inst. Sp. Miss., I, 266-275.

mann contended that the proceeding was at variance with the principles of international law, and asserted that it could not be reconciled with "the principle of non-intervention, so formally announced by the United States as the basis of American policy." He went further and declared that Mann, if caught, would have been eligible "to be treated as a spy."<sup>75</sup> Webster had no difficulty in riddling this argument. "A spy is a person sent by one belligerent to gain secret information of the forces and defenses of the other, to be used for hostile purposes. . . . To give this odious name and character to a confidential agent of a neutral power, bearing the commission of his country, and sent for a purpose fully warranted by the law of nations is not only to abuse language but also to confound all just ideas. . . . Had the Imperial Government of Austria subjected Mr. Mann to the treatment of a spy, it would have placed itself without the pale of civilized nations; and the Cabinet of Vienna may be assured that if it had carried, or had attempted to carry any such lawless purpose into effect, in the case of an authorized agent of this Government, the spirit of the people of this country would have demanded immediate hostilities to be waged by the utmost exertion of the power of the republic, military and naval."<sup>76</sup> If Webster made the eagle scream rather loudly, it must be remembered that Hülsemann had pitched the key; and in its legal aspect the argument was all Webster's.

<sup>75</sup> Cong. Globe, 31 Cong. 2 Sess., App., 45.

<sup>76</sup> Ibid., 45-48.



An agency, almost the sole purpose of which was secrecy, was involved in the negotiations for the Gadsden purchase, in 1853. After he was on the ground Gadsden was in doubt on a number of points and wrote asking further, and more specific, instructions.<sup>77</sup> It was decided to comply with Gadsden's request, but at the same time there was a good deal of hesitancy about sending anything written. The hazards of travel and of climate were not inconsiderable, and there was always danger that a messenger would not reach his destination and that his papers might come into hands for which they were not intended. In this case it was felt that "should a despatch upon that subject be intercepted and its contents become known to others than to President Santa Anna and his most trustworthy friends, all hope of making a favorable arrangement in regard to a new boundary would be at an end." To avoid this eventuality Christopher L. Ward was required to memorize an instruction to Gadsden. This comprised about ten pages of foolscap size, and consisted of details of boundary marks and of amounts of money which would be paid for the several lines. The only writing which Ward was allowed to carry was a cipher introduction from the Secretary of State to assure Gadsden that Ward's "verbal communications" were authentic instructions from the department.<sup>78</sup>

<sup>77</sup> Marcy to Gadsden, Dec. 22, 1853, MS. Inst. Mexico, XVI, 436-440.

<sup>78</sup> Memorandum of instructions, MS. Inst. Sp. Miss., III,

In 1849 the Department of State had been nervous over the prospect of Samana Bay going to Great Britain. Two years later its interest in Santo Domingo had been manifested by participation with Great Britain and France in a joint intervention to end the war between the two parts of the island. In 1854 two agents were sent—one an engineer, sent by the War Department, the other a political observer despatched by the Department of State. Captain George B. McClellan was investigating the bay and peninsula of Samana. William L. Cazneau had been sent earlier with instructions to report on the political situation, and relations with Haiti, the object being to determine whether the moment was propitious for negotiation concerning Samana Bay.<sup>79</sup> There was every motive for secrecy. As the United States had intervened to block supposed British negotiations a few years before, so there was a reasonable prospect that other nations would do what they could to break up American efforts. It was equally desirable to keep the Dominican authorities from knowing too much about the desires and aims of America lest the price of the desired concessions be advanced.<sup>80</sup> After Cazneau had re-

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38-43, 277-281; Marcy to Gadsden, Oct. 22, 1853, MS. Inst. Mexico, XVI, 435; despatches from Ward, Oct. 31, Dec. 4, 1853, MS. Secret Service Vol., I; from Gadsden, Nov. 20, 1853, March 20, 1854, MS. Desp. Mexico, XVIII.

<sup>79</sup> Above, 453-458.

<sup>80</sup> Marcy to Cazneau, Nov. 2, 1853, MS. Inst. Sp. Miss., III, 32-36.

ported favorably he was sent back; at the same time McClellan was despatched, to negotiate a treaty providing for the acquisition of the desired naval base. In this case it was not possible to keep the officials of the Dominican government in the dark, but the motives for secrecy, so far as third parties were concerned, were even stronger than before. Cazneau, therefore, was instructed to keep the fact and object of his visit, as well as the proposed provisions of the treaty, secret as long as possible.<sup>81</sup>

While these manifestations of active interest in Santo Domingo were progressing, the Pierce administration was showing concern about Cuba. Worry about Cuba was nothing new, for almost from the foundation of this country Cuba had been recognized as important in its relations to American policy. But Pierce's administration was interested in a more definite and concrete way than others, as is evidenced by the events which led to the Ostend manifesto. One phase of the situation in Cuba was particularly disturbing. That island, with a total population of about 1,200,000, had a black population of about half that number, of whom 450,000 were slaves.<sup>82</sup> The activity of the slave trade was practically unchecked, and the black population was growing.

At the same time the British government was using its influence in a way which aroused American sus-

<sup>81</sup> Id. to id., June 17, 1854, MS. Inst. Sp. Miss., III, 47-51.

<sup>82</sup> Chadwick, *Relations of the United States and Spain*, 228.

pitions. Secretary of State Marcy said flatly, "Spain, it is believed, has been encouraged by Great Britain to adopt a policy adverse to the well-being of this country." Specifically, Lord Howden, British minister in Madrid, had written to an American in Paris under date of November 14, 1853, outlining the policy he had been pursuing as follows: "Firstly, I have been making increasing representations at the number of slaves annually imported into the Island, and complaints of the almost open manner in which the traffic was carried on under the very noses of the Captains General. . . . Secondly, I have been making fruitless attempts to get the Spanish government to declare the abominable traffic in men, piracy,—that is to say, to follow the example of the United States in that particular. Thirdly, I passed my time in anxious solicitations to obtain the ultimate and complete freedom of those negroes called *emancipados* which have been fraudulently detained in bondage since 1817, in disregard of treaties. I rejoice to say that the Spanish government has listened to the dictates of justice and humanity, and has granted me this boon."

This policy Marcy attributed to the desire "to benefit her planting and other interests," rather than to philanthropy, and the whole he believed to have been conceived in a spirit of hostility to America.<sup>83</sup> His opinion of British policy is indicated in instructions to Buchanan, minister to Great Britain, July 2, 1853,

<sup>83</sup> Marcy to Davis, March 15, 1854, MS. Inst. Sp. Miss., III, 51-59.

where he said: "It is intimated, though not authoritatively announced, that it is the design of Spain whenever she clearly perceives that she can no longer retain possession of Cuba, to render the island worthless to any other power at the hazard of making it a source of annoyance to this country; and that England is disposed to concur in such a measure. . . . We do not complain that Great Britain enforces her treaty stipulations in regard to the *emancipados* in Cuba; but if it should prove to be true that she is using her influence in furtherance of a design to fill that island with emigrants from Africa, in order that when Spanish rule over it shall cease, it may become an African colony, . . . she ought to be conscious that she is concurring in an act which, in its consequences, must be injurious to the United States."<sup>84</sup> Though officially "unwilling to believe that such a scheme is entertained by Spain, or could be concurred in by England, yet the suggestion is not too idle to attract some attention."<sup>85</sup>

Charles W. Davis was appointed to give attention to the question. He was told plainly that it had been "repeatedly represented to this Department, through official and other channels, that the Africanization of Cuba is in contemplation by Spain, and that she is engaged in making arrangements to carry the measure into effect." Marcy pointed out that the United States

<sup>84</sup> Marcy to Buchanan, July 2, 1853, Serial 790, 33 Cong. 2 Sess., H. Ex. Doc. 93, 10.

<sup>85</sup> Id. to id., loc. cit.

had attempted to suppress the slave traffic, and had protested against importation of negroes into Cuba under a system of apprenticeship, for "to apprentice them would be to create the worst system of slavery that ever existed on earth; and to afterwards free them, to plant a wretched colony which would disturb the repose of the Union. The President is resolved that neither the one nor the other shall occur, so far as it is in his power to prevent it, and he is impatient to learn from unquestionable authority whether it is in embryo or serious contemplation, that he may propose measures according[ly] to Congress." Davis's mission was secret—so secret that he was not given a copy of his instructions, the substance of which he was to commit to memory, and he was to frame no report until he was safely back in Washington.<sup>86</sup>

Francis J. Grund was selected in 1858 as a sort of investigator at large in Europe. He was not sent in connection with any one problem, or even a group of related problems, but to gather data on a number of different subjects. Visit and search by British cruisers in the West Indies, termination of the commercial treaty with Hanover, the Scheldt dues, an isthmian canal,—these are only a few of the topics upon which he was to make inquiries. In all his work he was to allow only the American minister, in whatever country he might be, to know his true status. To all others he was to be simply an interested—and inquisitive—

<sup>86</sup> Marcy to Davis, loc. cit. There is no further manuscript material concerning this mission in the Department of State.

private citizen.<sup>87</sup> To all intents and purposes he was to be a supplementary and unofficial set of eyes and ears in Europe getting such information as a discreet private citizen could glean and to which a man in public station might not have access.

In 1859 there was trouble on the Mexican border. It grew out of the activities of one Cortinas, a Mexican, apparently of American citizenship. A private grievance became a public one through the action of the courts, and he finally took matters into his own hands,—attacked and destroyed the jail at Brownsville, liberating prisoners and killing those who offered opposition. After this exploit he became the hero and leader of discontented Mexicans in Texas, of whom there were many, and others came from across the border to join him. Reports which came to Washington were neither full nor enlightening, but they convinced the Buchanan administration that there was a serious situation on the border, which, so it seemed at that distance, was due to incursions into Texas by armed parties from Mexico. Troops had been sent to Brownsville, but from lack of accurate knowledge, Buchanan was “at a loss to judge what further measures may be necessary for the protection of our citizens.” All sorts of rumors were afloat; for example, that it was part of a movement to conquer a part of Texas and unite it to Mexico, that it was

<sup>87</sup> Cass to Grund, June 18, 1858, May 25, 1859, MS. Inst. Sp. Miss., III, 113-121; eleven despatches from Grund, Aug. 6, 1858—June 5, 1859, MS. Special Agent Bundle.



connected with the struggle between Miramon and Juarez for the control of Mexico, that it was simply a band of lawless desperadoes and banditti bent on plunder.

To clear up the many questions and establish a basis for a policy, Duff Green was selected. He was very widely acquainted in the region, he had railroad interests which would furnish an ostensible reason for going, he was experienced and used to secrecy. He was despatched, therefore, secretly, and his instructions enjoined secrecy upon him both in regard to his appointment and its object. "It is in the character of a private citizen that you will best be enabled to reach the true state of affairs and avoid the impositions of interested and designing men on both sides of the line. This confidence cannot be too seriously impressed upon you, both as regards your intercourse here and in the region whither you are destined."<sup>88</sup>

A secret agent, whose secret was kept for twenty-five years, was sent to Hawaii, in 1867. A reciprocity treaty between the United States and Hawaii had been framed, but its ratification seemed likely to meet with difficulties in Hawaii, through a combination of forces against it. Any strongly anti-American influence was pretty certain to be exerted against it, on the ground that reciprocity would tend to draw Hawaii into the American system. Joined with this group in opposi-

<sup>88</sup> Cass to Green, Nov. 18, 1859, MS. Inst. Sp. Miss., III, 131-135; reports from Green, Nov. 29, 1859—Feb. 20, 1860, MS. Special Agent Bundle.

tion to the treaty was another, larger, and rapidly growing,—the annexationists. These people argued that reciprocity would tend rather to hinder and postpone annexation, which they wanted to hasten. Edward M. McCook, the American minister, could use such influence as he possessed to forward the treaty, but it seemed to Seward that an unofficial and secret agent could marshal support somewhat more effectively. For this reason Zephaniah S. Spalding was sent to Honolulu to act in the capacity of a secret agent under the direction of McCook.<sup>89</sup>

Seward's expansionist ideas, while limited in relation to Hawaii, had for a time free play with regard to the Danish West Indies. He pursued the negotiation for them with system and energy, and eventually had the satisfaction of receiving from Minister Yeaman a signed treaty. Even before the signatures were actually attached, General Raasloff, in charge of the negotiations for Denmark, suggested that ships of war be sent at once to the islands, "and an agent or agents properly provided with instructions and all that may be needful to assist the Danish Commissioner in his work, and to do whatever else circumstances may require. I suggest that this should be done at once, because once the convention [is] signed here, time

<sup>89</sup> Seward to Spalding, Sept. 12, 1867, MS. Inst. Sp. Miss., III, 193-194; Seward to McCook, Sept. 12, 1867, *ibid.*, 194-195; Z. S. Spalding to his father, R. P. Spalding, member of Congress, April 14, 1869, For. Rel. 1894, App. II, 146-149; see *ibid.*, 16, 144; Spalding's correspondence, MS. Desp. Hawaii, XII.

will be scarce, and action must be without delay.”<sup>90</sup> For the task Seward selected an old friend and neighbor, Rev. Charles R. Hawley, and for some reason not entirely comprehensible made him a secret agent, but under such circumstances that both from the nature of his duties and from the number to whom Seward himself sent the news, the secret could not be kept.<sup>91</sup>

The previous year Seward's expansionist dreams had led him to despatch a special mission to Santo Domingo. This mission, composed of his son and of Admiral Porter, was strictly secret.<sup>92</sup> In their instructions reference was made to the mission of Cazneau, in Pierce's administration, at which time, "the desire of the United States having become known to the representatives of some foreign states in that quarter, they had influence with the Dominican Government to thwart our plans." It was felt, also, that "the late intervention of Spain in the Dominican Republic had its motives in a jealousy of our desires for a naval station in Samana." With such a record in the past it was natural to suppose that success could be expected only if "caution, secrecy, and despatch" were

<sup>90</sup> Raasloff to Yeaman, Oct. 1, 1867, enclosed in Yeaman to Seward, No. 106, Oct. 1, 1867, MS. Desp. Denmark, IX; see also Yeaman to Seward, No. 109, Oct. 12, 1867, *ibid.*

<sup>91</sup> Seward to Hawley, Oct. 26, Nov. 15, Dec. 16, 1867, MS. Inst. Sp. Miss., III, 174-179; Seward to Yeaman, Oct. 30, 31, 1867, MS. Inst. Denmark, XIV, 304-306; five despatches from Hawley, Nov. 13—Dec. 2, 1867, MS. Special Agent Bundle.

<sup>92</sup> Above, 671-673.

observed.<sup>93</sup> Subsequently, Grant's emissary, Orville E. Babcock, had like, and even stronger, motives for secrecy. Indeed, there is some evidence that part of his instructions on the first mission, in 1869, were secret from the Secretary of State.<sup>94</sup>

The ten years' war in Cuba furnished the occasion for a mission early in Grant's administration. That struggle was fought with such intense violence that the United States could not overlook the possibilities. There was a good deal of American capital invested in Cuba, and not a few American citizens resided in the island. Some of them had suffered injury, and all were liable to injury. It was felt to be desirable to take some action very promptly, but embarrassment arose from the disorganization of the American legation at Madrid. Minister Hale, who had served there since 1865, had resigned but had not yet left the post. He was hardly the man to conduct such a delicate negotiation as would be involved in a tender of mediation to Spain—always oversensitive about interference in the domestic troubles of her decayed empire. On the other hand, the new minister, General Sickles, was not yet ready to leave the United States. "Yet, in an affair so delicate, so complicated, and so important as this is, delay is dangerous, and may be fatal."

To avoid delay, therefore, a special agency was resolved upon. But a second motive arose from the

<sup>93</sup> W. H. Seward to F. W. Seward, Dec. 17, 1866, MS. Inst. Sp. Miss., II, 39-42.

<sup>94</sup> Above, 679-683.

necessity for secrecy. There could be no hope of success for the mission if its character were known. The Spanish government was, as always, in domestic difficulties, as well as in trouble with its dependencies, and it could not afford to let such an offer be made publicly. The American government, on the other hand, was in no better position for publicity. To make such an overture publicly would insure its nonacceptance. The agent, Paul S. Forbes, therefore, was directed, June 26, 1869, to "maintain strictest silence as to the character in which you visit Madrid." He was even to keep the matter secret from the retiring minister.<sup>95</sup>

At the very close of the same year another secret agent was despatched to a region in revolt, but under circumstances quite different. James W. Taylor was sent by Secretary Fish into the region of Manitoba, Saskatchewan, and Columbia. Some phases of American expansionist activity after the Civil War have been explained.<sup>96</sup> But the story of the dreams of annexing Canada remains a subject which needs careful study.

<sup>95</sup> Fish to Forbes, June 26, 1869, MS. Inst. Sp. Miss., III, 203-207; further instructions, July 23, Sept. 15, 1869, *ibid.*, 210, 211; Forbes to Fish, July 20, Sept. 14, 15, 1869, MS. Special Agent Bundle; see also Serial 1418, 41 Cong. 2 Sess., H. Ex. Doc. 160, 17, 19, 21, 27, 30, 47.

<sup>96</sup> T. C. Smith, "Expansion after the War, 1865-1871," *Political Science Quarterly*, XVI, 412-436; T. Dennett, "Seward's Far Eastern Policy," *American Historical Review*, XXVIII, 45-62; F. A. Golden, "The Purchase of Alaska," *ibid.*, XXV, 411-425.

A number of factors combined to stimulate into unusual activity the permanent underlying sentiment for the annexation of Canada. The irritations and fears growing out of the difficulties on the Canada border during the Civil War,<sup>97</sup> the thought that Canada might serve as a means of paying the Alabama claims,<sup>98</sup> the Fenian difficulties, American suspicion and dislike of the dominion movement,<sup>99</sup> the possession of large military forces confident of their capacity,—these are only a few of the factors to be considered. The upshot was that early in Grant's administration Secretary Fish sent instructions to Minister Motley in London with reference to the possible annexation of Canada,<sup>100</sup> and Fish discussed the question of cession with the British minister at Washington, Sir Edward Thornton.<sup>101</sup>

In addition to this general desire to obtain Canada, there existed a lively hope of getting immediate possession of one particular area. Lord Selkirk's settlement in the central part of British North America had already behind it nearly a half century of history. Long before a beginning had been made in the settlement of Minnesota, there were settlers over its north-

<sup>97</sup> Callahan, "Northern Lake Frontier during the Civil War," 337-357.

<sup>98</sup> Rhodes, *History of the United States*, VI, 339-344.

<sup>99</sup> *Diplomatic Correspondence*, 1867-1868, 76-77.

<sup>100</sup> Fish to Motley, Jan. 14, 1870, Moore, *Digest*, I, 581-582; MS. Inst. Gr. Britain, XXII, 163-168; Motley to Fish, Feb. 2, 17, 21, 1870, MS. Desp. Gr. Britain, CI, CII.

<sup>101</sup> Moore, *Digest*, I, 583; C. F. Adams, *Lee at Appomattox and Other Papers* (Boston, 1902), 156.

ern line in British territory. But progress had been slow and the career of the colony had been checkered. The settlers felt that they were neglected, and not without reason. Monthly postal communication with Canada was instituted about 1857, but was discontinued after two or three years. The line of contact with the outside world through British territory was the roundabout, slow, and uncertain route through Hudson Bay.<sup>102</sup> In 1849 Minnesota was organized as a territory. Within ten years it developed into a state. Railroad communications with the East were established.<sup>103</sup> In 1862 American citizens launched a steamboat on the Red River to connect St. Paul with Fort Garry.<sup>104</sup>

The consequence of these developments was that postal communications, as well as routes for trade and migration, ran into the United States rather than in the direction of Canada. Economically it bound the Selkirk settlements with Minnesota, and they began to feel the tide of the northwest movement which was filling up the northern tier of the United States. These connections naturally produced a desire on the American side of the line for annexation. At the same time they increased the dissatisfaction of the inhabitants of the Selkirk settlements with their treatment by the British government and led to the development of a considerable annexationist sentiment among them.

<sup>102</sup> Serial 1138, 37 Cong. 2 Sess., H. Ex. Doc. 146, 43-53.

<sup>103</sup> *Ibid.*, 51.

<sup>104</sup> *Ibid.*, 19.



Between 1867 and 1870 matters reached a crisis. The purchase of Alaska appeared to make it logical to fill in the gap between Minnesota and North Dakota on the one hand and Alaska on the other. The problem of railroad construction was becoming pressing, and a number of the propositions which were made called for an international railroad which could become national by the simple expedient of annexing the British territory. The passage of the Dominion of Canada act appeared to be calculated to bind this area more closely to the British Empire; hence if annexation were to come at all, it must come promptly. Negotiations for the release of the area from the control of the Hudson Bay Company were on foot, but were not moving smoothly and were a cause for dissatisfaction. Finally, the attempt on the part of the Canadian government, after the dominion had been established, to send a governor resulted in his expulsion and in insurrection.

The resort to arms was not a movement in favor of annexation to the United States. It grew out of the interests and desires of the French and Roman Catholic sections of the community, who had cherished dreams of building a second Quebec on the banks of the Red River.<sup>105</sup> This rebellion was imperfectly understood on the American side of the line. It was certainly a manifestation of an unwillingness on the part of some of the settlers to be drawn into the

<sup>105</sup> C. Martin, "The First 'New Province' of the Dominion," *Canadian Historical Review*, I, 368.

dominion. It might not unnaturally have been regarded as a manifestation of a desire to join the United States. In any event, it furnished a convenient opportunity for annexationist activities.

It is necessary to bear all these factors in mind to find an explanation of Taylor's secret mission. He had been in the Red River country in the early days of the Civil War as a special agent of the Treasury Department. When the *Trent* affair appeared likely to result in war, he had made definite suggestions with reference to a winter campaign to seize and annex the territory. He was an authority on the geography,—physical, economic, and political,—of the area, and he was in contact with Senator Alexander Ramsey, of Minnesota, who was known to be an annexationist. These circumstances explain his selection late in 1869 to go into the Selkirk, Saskatchewan, and Columbia districts to make an investigation. Inasmuch as his labors were in the direction of annexation, it was only natural that his instructions should close by saying, "All your proceedings under this commission are to be strictly confidential, and under no circumstances will you allow them to be made public. This injunction includes the fact of your appointment." <sup>106</sup>

<sup>106</sup> Fish to Taylor, Dec. 30, 1869, Jan. 15, 1870, MS. Inst. Sp. Miss., III, 208-210, 214-215. Taylor had been in correspondence with the Department of State before his appointment. Taylor to Seward, Nov. 25, 1867, Feb. 27, March 24, Nov. 18, 1868, MS. Desp. Winnepeg, 1½; Taylor to Grant, May 8, 1869, MS. Misc. Letters; Taylor to Fish, Nov. 16, 1869, Serial 1405, 41

When Commodore Shufeldt was sent to make a treaty with Corea in 1881,<sup>107</sup> his mission was carefully disguised. He was sent to China as a naval attaché at the American legation, and even the minister, James B. Angell, did not know the true character of his duties until Shufeldt arrived and gave him the information in person.<sup>108</sup>

There have been many other secret agents beside those mentioned. But for cases since 1878 the archives are not open. This excludes the very considerable number who served during the Great War. The complexity of the problems, the fact that the United States was not at war with all the nations with which the allied powers were fighting, made the employment of secret agents inevitable. But there is not much trustworthy material on the subject. For many cases which occurred before 1878 the material is missing from the archives of the Department of State and lies buried in the private papers of former officials and agents, or has been destroyed. The Duff Green case furnishes a good illustration. There is no reason to question the accuracy of Calhoun's report that no papers relating to

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Cong. 2 Sess., Sen. Ex. Doc. 33, 7-8. Taylor continued to correspond voluminously. Jan. 20—Aug. 17, 1870, MS. Desp. Winnepeg, I½. The first and last were written in St. Paul, the others in Washington and Ottawa. The first was printed, Serial 1405, Doc. 33, 17-52. See, in general, T. G. Blegen, "James W. Taylor, a Biographical Sketch," *Minnesota History Bulletin*, I, No. 4, 153-219.

<sup>107</sup> Above, 364.

<sup>108</sup> Paullin, "Opening of Korea," 483.

this agency were to be found in the files of the department. To give a complete account would require access not only to the Calhoun correspondence, fortunately available, but to that of Tyler, Upshur, and of Green himself. There have been other cases, moreover, where both instructions and reports were verbal. For them there is only the evidence of diaries, memoirs, and other sources which are indirect in character. Finally, for several cases of agencies known to be secret, no record of motives has been left, nor do the attendant circumstances explain the reasons why the matter should have been kept secret.

## II. *Expert and Technical Agents*

Another division of this group of agencies has grown up because the problem required, for its effective solution, an expert or a person of special qualifications. Experience in the use of agents on this basis has been almost exactly the reverse of experience with secret agents. It was anticipated at the outset that secret business would be vitally important; yet it has not had the expected significance. There is no evidence at all that the fathers of the nation expected expert or technical agents to play a very important rôle. But the improvement of communications, the increasing delicacy and complexity of international relations, have made technical and expert service more and more vitally a part of diplomacy. Sometimes, when technical questions affect important political issues, the experts serve in an advisory capacity to the plenipoten-

tiaries. But there has been an increasing tendency, in the twentieth century, to appoint experts with pleni-potentiary power.

One of the first appointments which was frankly put upon the basis of special competency was that of A. Dudley Mann, who was selected to visit the states of the Zollverein in 1847.<sup>109</sup> It was desired that these states should break away from the path in which Prussia had been leading them, and follow the lead of Hanover, which had made a liberal treaty with the United States. The Hanover treaty had been negotiated by A. Dudley Mann, who had had previous experience as consul at Bremen. His knowledge of German affairs was deemed so "extensive as well as minute" that he was regarded as an expert in dealing with commercial problems there, and his selection was put upon that basis.<sup>110</sup> The special character of his mission grew out of the fact that the United States had no regular representatives at the capitals of the states involved. The choice of Mann to undertake the task was based upon his special fitness.

Another case, very similar in character, occurred two years later. The United States was considering the negotiation of a reciprocity treaty with the British North American provinces. Before it could be intelligently undertaken, there was need for a good deal of information. Israel de Wolf Andrews had been con-

<sup>109</sup> Above, 653-655.

<sup>110</sup> Buchanan to Mann, June 26, 1847, MS. Inst. Dip. Agents, etc., Germany, etc., I bis, 1-9.

sul at St. Johns, New Brunswick, for five years. During that period he had repeatedly sent despatches to Secretary Buchanan, urging the importance of an understanding between the United States and the provinces.<sup>111</sup> It was because of the special interest and the capacity he had shown that Andrews was selected "to collect statistical and other information, relating to the history, condition and future prospects of those colonies, especially in connection with their present and prospective relations, commercial and political, with the United States," as well as to make "observations and any useful suggestions . . . having a bearing upon American and British interests."<sup>112</sup>

Andrews' agency was discontinued in a few months,<sup>113</sup> but after Clayton's resignation Andrews presented the matter to Webster, emphasizing "the interest which is felt in the Provinces at this time as to the arrangements which shall be made respecting the trade between the two countries, and to the important political consequences upon a judicious arrangement of their commercial relations." He felt that the adoption of a policy of reciprocity would lead, in the long run, to annexation.<sup>114</sup> This led to a new mission, which was shortly followed by a third, and about a year later

<sup>111</sup> Andrews to Cass, June 9, 1858, MS. Special Agent Bundle.

<sup>112</sup> Clayton to Andrews, July 6, 1849, MS. Inst. Sp. Miss., I, 275-578.

<sup>113</sup> Id. to id., Nov. 28, 1849, MS. Special Agent Bundle.

<sup>114</sup> Andrews to Webster, July 9, 1851, MS. Special Agent Bundle.

by a fourth, his special interest and peculiar fitness being the decisive factor in each case.<sup>115</sup> In the last of this series of missions he was to feel out public sentiment upon the subject of a reciprocity treaty which had already been drafted, and in connection with that task was given means not only to ascertain, but also to influence, opinion.<sup>116</sup> Indeed, Andrews was kept constantly employed during the negotiation of the reciprocity treaty, and while its ratification was pending, rendering important and capable service.<sup>117</sup>

The special qualification of Reverend George G. Goss, who went as a special agent to Mexico, in 1850, to secure and prepare a cemetery for the officers and men who lost their lives near that city in the Mexican War, arose from his service as chaplain during the war. It was because, as chaplain, he "necessarily became acquainted with the places of sepulture" that he was selected.<sup>118</sup>

<sup>115</sup> Webster to Fillmore, July 30, 31, 1852, MS. Special Agent Bundle; Conrad, acting, to Andrews, Nov. 2, 1852, *ibid.*; Marcy to Andrews, Sept. 12, 1853, MS. Inst. Sp. Miss., III, 109-113.

<sup>116</sup> Andrews to Cass, *loc. cit.*; Marcy to Andrews, April 10, 1854, MS. Special Agent Bundle; Cushing to Andrews, April 12, 1854, *ibid.*; Marcy to Andrews, April 15, 1854, *ibid.*; and MS. Inst. Sp. Miss., III, 36-38.

<sup>117</sup> Marcy to R. T. M. Hunter, July 20, 1854, MS. Special Agent Bundle; Everett to Andrews, Sept. 11, 1854, *ibid.*; Pierce to Andrews, Dec. 4, 1854, *ibid.*; Marcy to Andrews, Nov. 25, 1854, *ibid.*; for further correspondence, see *ibid.*; also C. C. Tansill, *The Canadian Reciprocity Treaty of 1854* (Baltimore, 1922).

<sup>118</sup> Webster to Goss, Dec. 20, 1850, MS. Inst. Mexico, XVI, 238-240; Derrick, acting, to Letcher, minister to Mexico, No.



In 1856 a special mission was sent to Bogota. It was precipitated by a group of incidents of which the most outstanding was a riot at Panama in April, 1856, which was attended by the loss of several American lives and the destruction of a considerable amount of American property, and which was itself the occasion for an investigation by a special agent.<sup>119</sup> Out of this episode there grew a demand for indemnities, and an insistence upon preservation of order and security on the isthmus. In addition, there had been a disposition on the part of New Granada to impose high tonnage duties on American vessels and what were deemed burdensome taxes on American mails. It was determined, therefore, to attempt to negotiate a treaty with New Granada, which would involve the reorganization of the administration of the isthmus, and the guarantee of an open and safe passage by the naval and military forces of the United States, as well as to settle the other difficulties.<sup>120</sup> The negotiation of such a treaty was known to be a very difficult task, and it was deter-

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74, Aug. 25, 1851, *ibid.*, 291-292; Goss' report, Feb. 26, 1852, MS. Desp. Mexico, XV; Everett to Goss, Feb. 11, 1853, MS. Inst. Mexico, XVI, 360-361; despatches from Goss, Feb. 7, 21, June 3, Sept. 14, 1853, MS. Secret Service Vol.

<sup>119</sup> The agent was Amos B. Corwine. He was also instructed to carry despatches to Bowlin, minister to New Granada, and to assist him with negotiations if requested. Marcy to Corwine, May 12, July 3, 1856, MS. Inst. Sp. Miss., III, 74-80; Marcy to Bowlin, July 3, 1856, MS. Inst. Colombia, XV, 227-229; for report, see *New York Times*, Sept. 23, 1856.

<sup>120</sup> Serial 1885, 46 Cong. 2 Sess., Sen. Ex. Doc. 112, 22-25.

mined to send a special commissioner to assist Minister Bowlin. The mission was tendered to Isaac E. Morse on the ground that it required "peculiar qualifications," among which was a knowledge of both the French and Spanish languages, and because he combined the desired elements in an eminent degree.<sup>121</sup>

An agency, almost entirely technical in character, occurred in 1860, and grew out of the heavy expenditure which the government was making in behalf of distressed and destitute American seamen in Pacific ports. Reports from some of the regular officials of the diplomatic service, notably from John R. Clay, minister to Peru, had led to a conviction that there was maladministration and a suspicion that there was speculation. In addition, there was a quarrel at Callao among rival hospitals, most of which were, in reality, "low boarding houses," that demoralized the service which was supposed to be rendered.<sup>122</sup> The investigation which was deemed essential, and the administrative changes which such an investigation might show to be necessary, required a man "upon whose professional skill and experience in hospital affairs" the department could confidently rely, and the choice of Dr.

<sup>121</sup> Marcy to Morse, Oct. 30, 1856, MS. Inst. Sp. Miss., III, 81-83; Marcy to Bowlin, Dec. 3, 1856, two instructions, MS, Inst. Colombia, XV, 230-231, 232-245; Cass to Bowlin, April 17, 1857, *ibid.*, 264; Morse's despatches, Nov. 7, 1856—July 7, 1857, MS. Secret Service Vol., I, 694-770, *passim*; see Moore, Digest, I, 590; III, 19-20.

<sup>122</sup> Trescot, acting, to Baxley, July 25, 1860, MS. Inst. Sp. Miss., II, 7-13; despatches from Baxley, July 5, 1860—March 7, 1862, MS. Secret Service Vol., I, 862-1066, *passim*.

H. Willis Baxley, of Baltimore, was made on the basis of his "high reputation for integrity, energy, tact, and professional experience."<sup>123</sup>

The motives for sending William M. Evarts to London in 1863 were mixed, but one of the two principal reasons for his mission was the need of an expert. In the *Alabama* case Charles Francis Adams had had the very able assistance of an eminent English lawyer, R. P. Collier. But after that case he was no longer available because of criticism of his action by persons of influence. Adams was convinced that no other "lawyer of eminence will have the courage to repeat Mr. Collier's experiment."<sup>124</sup> It was determined, therefore, to send an "American lawyer of learning and experience" to assist in the consultations with such British counsel as Adams might employ, and

<sup>123</sup> Trescot to Baxley, July 3, 18, 25, 1860, MS. Inst. Sp. Miss., II, 4-15; further instructions, Sept, 10, Nov. 10, 1860, March 30, 1861, *ibid.*, 15-22.

Baxley's mission was followed by another investigation in 1862. When James S. MacKie, of the Department of State, was instructed to carry a ratified treaty to the minister of Bolivia, and to exchange ratifications in his absence, he was further directed to investigate the relative merits of two hospitals in Valparaiso, and also the "relative character, both personal and professional, of the three medical gentlemen who are contending for government patronage," one of whom had been appointed by Baxley. MacKie was advised that the investigation would be more successful if it was not known that he was acting under instructions. Seward to MacKie, July 23, 1862, MS. Inst. Sp. Miss., III, 24-28.

<sup>124</sup> Quoted, Rhodes, *History of the United States*, IV, 371, n. 3.

in the preparation of papers and proofs. On that basis and for those purposes Evarts was despatched.<sup>125</sup>

The agency of Morse as assistant to Minister Bowlin did not result in a treaty with Colombia. Conditions of isthmian transit continued to be unsatisfactory. Further, and fruitless, efforts ensued. Meanwhile, September 24, 1868, the legislature of New York passed a law incorporating the Isthmus Canal Com-

<sup>125</sup> Seward to Adams, April 13, 1863, *Diplomatic Correspondence*, 1863, I, 212-213; omitted passage, No. 548, MS. Inst. Gr. Britain, XVIII; Adams to Seward, May 8, July 3, 1863, *Diplomatic Correspondence*, 1863, I, 253, 303-304; see also Evarts to Seward, June 10, 1863, MS. Desp. Gr. Britain, LXXXIII. Adams wrote to Seward on Aug. 20, 1863, of the arrival of Whiting "as the successor to the labors of Mr. Evarts." *Diplomatic Correspondence*, 1863, 395.

Adams was annoyed by the presence of special agents in England and wrote in his diary: "It cannot be denied that ever since I have been here the almost constant interference of government agents of all kinds has had the effect, however intended, of weakening the position of the minister. Most of all has it happened in the case of Mr. Evarts, whom the newspapers here have all insisted to have been sent to superintend my office in all questions of international law." C. F. Adams, *Studies Military and Diplomatic, 1775-1865* (New York, 1911), 363-371.

In 1867 Isaac J. Redfield was despatched on a mission of a technical character growing out of the Civil War. The Department of State authenticated and confirmed the letter of authority issued by the Secretary of the Treasury, which made Redfield "counsel and legal adviser for the United States to visit Europe with reference to all suits now pending in England and France" concerning the detaining of vessels, cotton, and other property. Detailed instructions were given regarding the law suits pending in Liverpool, where Redfield was to cooperate with the American consul, Dudley. Seward to Redfield, Jan. 12, 18, March 23, 25, May 23, 24, 1867, MS. Inst. Sp. Miss., III, 142-171; eight despatches, Dec. 20, 1866—Jan. 26, 1869, MS. Misc. Letters.

pany, in which Peter Cooper, William M. Evarts, William H. Vanderbilt, and many other well-known men were interested, among them William H. Seward, Jr. Before the canal could be begun a new treaty with Colombia was deemed essential, and Seward went to New York to confer with those interested in the project.<sup>126</sup> This conference led to a modification of the demands of the United States,<sup>127</sup> and was followed by the despatch of Caleb Cushing as special commissioner to assist Minister Sullivan.

The reason was not that the administration had lost confidence in Sullivan; it was, rather, that Seward did not feel he had sufficient experience to be trusted beyond the boundaries of instructions. The need was for a man of such experience and discretion that he could go untrammelled by formal instructions. Caleb Cushing was such a man. He had had very wide experience; indeed, there were few others in the United States to whom such blanket authority would have been committed as was confided in the portion of his instructions which read, "In fine, the President intends that you shall possess full discretion to act in the premises according to your best judgment in the circumstances, . . . in the same degree and way that the head of this department in the exercise of a sound discretion might do if the negotiations were conducted

<sup>126</sup> Seward to Cooper, Sept. 28, Oct. 16, 21, 1868, Feb. 13, 1869, MS. Domestic Letters, LXXIX, 361-362, 451, 551.

<sup>127</sup> Seward to Sullivan, No. 60, Oct. 24, 1868, MS. Inst. Colombia, XVI, 327-330.

at Washington.”<sup>128</sup> The case, considering the importance and delicacy of the questions involved, is almost unique.

The circumstances which involved the mission of Paul S. Forbes to Spain in secrecy have already been recounted.<sup>129</sup> But the basis for the selection of Forbes was his special fitness for the task. He had already taken “a zealous and intelligent interest” in the problem of bringing peace between Spain and Cuba; he was thoroughly conversant not only with the details of conditions as they existed but was familiar with the background of the struggle; and he was on confidential personal terms with some of the most influential people of Spain, among them General Prim, who had charge of the negotiation. It was because of his peculiar qualifications that the very delicate task was confided to Forbes, in 1869.<sup>130</sup>

John A. Kasson had had long experience in drafting international conventions. He had signed postal conventions with several European countries, served as minister to Austria-Hungary and to Germany, as special agent to Serbia, and had represented the United States at the Congo and Samoan Islands conferences.

<sup>128</sup> Seward to Cushing, Nov. 25, 1868, Feb. 15, 1869, MS. Inst. Colombia, XVI, 332-337, 343-344, 354-355; despatches from Cushing and Sullivan, Dec. 9, 1868—Feb. 1, 1869, MS. Desp. Colombia, XXVII.

<sup>129</sup> Above, 737-738.

<sup>130</sup> Fish to Forbes, June 26, 1869, MS. Inst. Sp. Miss., III, 203-207; Chadwick, *Relations of the United States and Spain*, 294.



On the basis of this experience he was selected by President McKinley to negotiate reciprocity treaties in accord with the revenue act of 1897. He completed several agreements of limited scope which became operative by proclamation of the President, but the twelve treaties that he negotiated were not ratified by the Senate, and he resigned in 1903.<sup>131</sup>

The chaotic conditions in Cuba during the last part of the nineteenth century resulted in frequent injury to foreign interests. In 1897 the circumstances regarding the arrest, imprisonment, and death of a citizen of the United States were such as to require investigation. For that purpose a lawyer, William J. Calhoun, was appointed counsel to act with Consul General Lee and a Spanish commissioner. He also reported on the general situation in Cuba.<sup>132</sup> A few years later, in 1905, Calhoun was made a special commissioner to investigate the situation in Venezuela,

<sup>131</sup> *Annals of Iowa*, Third Series, 1915-1921, 346-358; *For. Rel.*, 1897, XXIV; Richardson, *Messages and Papers*, X, 150-152; *For. Rel.*, 1901, App., 208-211; for revenue act, see *Stat. at Large*, XXX, 203-205.

In 1891 John W. Foster had been made special minister to Spain to discuss commercial reciprocity, since the treaty he had negotiated while minister to Spain had been rejected by the Senate. *MS. Precedent List*. A reciprocity treaty was negotiated with Cuba in 1902 by General T. H. Bliss, "who was specially commissioned by the President, although a diplomatic officer had been accredited to the new republic." *Crandall, Treaties*, 66.

<sup>132</sup> *Who's Who in America*, IX, 379; instructions, May 8, 1897, *MS. Inst. Sp. Miss.*, IV, 171; reports, June 10, 1897, *MS. Special Agent Bundle*; June 22, 1897, *MS. Special Agent Vol.*, III.



especially the facts concerning the interests of American citizens, in order that the government of the United States could intelligently formulate a policy. The technical character of some of the claims made it desirable that a man with special training be despatched.<sup>133</sup>

The relations between the United States and Santo Domingo in the last twenty years have been of such a character as to involve a number of special agencies, and among them some calling for experts. A notable case occurred in 1905, at a time when the domestic turmoil and the financial difficulties of that country brought "imminent and pressing danger of intervention on the part of certain European creditors." It was determined to offer to the government of the Dominican Republic the assistance of the United States "in the work of regulating the finances of the republic by undertaking the administration of all its custom houses."<sup>134</sup> The American minister at the time was Thomas C. Dawson, a man of ability, who later became an expert in Caribbean matters, but who at this moment had not yet had a great deal of experience. There was, moreover, a man of unusual qualifications available, Commander A. C. Dillingham, of the Navy. He had been in Dominican waters during the previous years with the *Detroit* to protect

<sup>133</sup> Instructions, July 20, 1905, MS. Inst. Sp. Miss., IV, 399; For. Rel., 1905, 990, 1000, 1002-1003; report, Serial 5257, 60 Cong. 1 Sess., Sen. Doc. 413, 161-269.

<sup>134</sup> Hay to Dillingham, Jan. 5, 1905, For. Rel., 1905, 300-301.

American lives in the encounter between Morales and the Jimenistas. In that task he had shown rare tact and won the confidence of both, so that it was on the *Detroit* that a peace agreement was drafted and signed.<sup>135</sup>

At the same time he had had very frank discussions with Morales and his supporters with regard to finances, and Morales had offered "to turn over all the custom-houses in the Dominican Republic to the Government of the United States, for the purpose of enabling it to establish an orderly and business-like administration of the Dominican revenues, the payment of the recognized foreign claims, the defraying of the necessary expenses of government, and the creation of a sinking fund for the gradual liquidation of the national indebtedness." It was natural that when the United States decided to accept the offer it should send back for the purpose of making arrangements the same man to whom the proposition had originally been made. It was, therefore, because of his experience, which, combined with ability and discretion, gave him "exceptional knowledge of the present conditions in the Dominican Republic," that he was sent.<sup>136</sup>

Dillingham and Dawson succeeded in effecting an arrangement, and Dawson telegraphed the Department of State, January 21, 1905, "to suggest sending an expert with at least two assistants to begin reorganiza-

<sup>135</sup> Dawson to Roosevelt, July 1, 1905, For. Rel., 1905, 386.

<sup>136</sup> Hay to Dillingham, loc. cit.

tion," and to take charge of the most important points as soon as possible.<sup>137</sup> The financial affairs of Santo Domingo were in such a tangled condition that only an expert could hope to make headway in straightening them out. In March, 1905, therefore, Jacob H. Hollander, professor of political economy in Johns Hopkins University, was selected. He had already served as special commissioner to revise the laws relating to taxation in Porto Rico, and as treasurer of the island, and had other experience which clearly gave him special qualifications.<sup>138</sup> He was given charge of investigations in Santo Domingo, and later in Europe, of the financial affairs of the republic, and served in other capacities as well.<sup>139</sup>

In 1912 domestic difficulties became so acute that the American administration of finances was crippled and in danger of breaking down. A revolution had been in progress nearly a year, and no end appeared in sight. Indeed, slight effort was being made to put an end to a situation which opened the way for graft on the part of government officials.<sup>140</sup> Because the government of Haiti was not vigorous in enforcing neutrality, the revolutionary groups made that country a base, and conditions along the border were particu-

<sup>137</sup> For. Rel., 1905, 306; for Dawson's report, see *ibid.*, 301-312.

<sup>138</sup> *Who's Who in America*, XI, 1368.

<sup>139</sup> Cong. Record, 65 Cong. 2 Sess., LVI, 1727-1728; Adeë to Dawson, March 25, 1905, For. Rel., 1905, 355; Dawson to Hay, April 1, 1905, *ibid.*, 365.

<sup>140</sup> Russell to Knox, Sept. 16, 1912, For. Rel., 1912, 365-366.

larly bad. The American minister, therefore, suggested intervention on the ground that neither side in the struggle was fitted to govern if peace were established. It seemed to him necessary "to dictate a policy beneficial to the country."<sup>141</sup> Before engaging in such a drastic program it seemed desirable to have an investigation made on the ground by persons thoroughly acquainted with the whole policy of the United States and expert in their judgments. For this purpose President Taft selected Mr. William T. S. Doyle, chief of the division of Latin American affairs of the Department of State, and Brigadier General Frank McIntyre, chief of the bureau of insular affairs of the War Department.<sup>142</sup> Both were men with special qualifications which dictated their choice.

A very unusual special mission of this character occurred in the course of the Great War. In 1917, at a time when it was thought possible greatly to strengthen the eastern front against the Central Powers, it was seen to be essential to keep the Siberian railroad in reasonably good condition. It was proposed to do this in cooperation with the government of Russia. In furtherance of that idea the United States sent to Russia a group of experts headed by Mr. John F. Stevens, who was given the rank of

<sup>141</sup> Russell to Knox, Sept. 19, 1912, *For. Rel.*, 1912, 366.

<sup>142</sup> Wilson, acting, to McIntyre and Doyle, Sept. 24, 1912, *For. Rel.*, 1912, 366-367; Wilson to Russell, Sept. 24, 1912, *ibid.*, 367-368; despatches from Russell and commissioners, Oct. 20, 25, Nov. 20, 1912, *ibid.*, 372-376.

minister. The work of the commission was so largely technical in character that only experts could have been sent.<sup>143</sup>

In addition to those which have been mentioned, there are many other special agencies that have grown out of situations requiring special training or experience, some of them of such a minor character that they are not significant enough to detail.<sup>144</sup> There is also a large number of executive agents, expert in character, that may be dealt with as a group. These are men sent as delegates and as technical advisers to international conferences. It was to be expected that the American representatives to such gatherings as the Berlin wireless conference of 1906, or the London naval conference of 1908 and 1909, should be

<sup>143</sup> *New York Times*, May 10, July 5, 9, 1917.

<sup>144</sup> When James Smithson left a legacy to the United States there was no one to represent the government in the litigation involved. In 1836 an act of Congress authorized the President to appoint an agent to act on behalf of the United States. Richard Rush was instructed July 11, 1836. It took two years to successfully complete the mission. MS. Inst. Sp. Miss., I, 155-159, 164, 167; despatches, July 25, 1836—Sept. 11, 1838, MS. Special Agent Bundle. In 1853 Dr. Everett Morrow was detailed to accompany Perry on his expedition to Japan, in order to distribute and collect seeds. MS. Inst. Sp. Miss., III, 24-25. E. O. Shakespeare was instructed in 1885 to study the cholera epidemic. MS. Special Agent Vol., II. In 1897 Charles S. Hamlin and David Starr Jordan represented the United States at a meeting of experts from Great Britain and Canada "in order . . . to arrive at correct conclusions respecting the condition of the seal herd frequenting the Pribilof Islands." Jordan had previously made investigations in Alaska. For. Rel., 1897, 303, 311-318.

men selected for their special training in the subjects to be considered. In similar fashion the technical advisers to the commission to negotiate peace after the Great War, and to the American delegation at the Conference on the limitation of armament, were naturally men selected because they were experts in special fields. This group of agents is a very large one, and in many respects an important one, but it is not necessary to rehearse each instance in detail.

### III. *Ceremonial Agents*

The third group of agents whose appointment grew out of the character of the functions they were to exercise is composed of those sent to represent the President on ceremonial occasions. Republican simplicity long persuaded the United States to abstain from sending representatives to royal coronations, weddings, funerals, and other ceremonies. Even when courtesy or interest might have suggested a departure from custom, questions of precedence entered in to suggest it were better not to send any representative, rather than have him slighted because he did not have the rank of ambassador. However, even before the United States was recognized as a great power, there were occasions when exceptions were made to the rules dictated by republican simplicity.<sup>145</sup>

Among the many manifestations of American gratitude to Russia for the attitude assumed by that country during the Civil War was the departure from

<sup>145</sup> Above, 191-196.



the American custom of sending no ceremonial missions. For years great occasions in the Romanoff family were given special attention. When, in 1866, Alexander II escaped assassination, Congress congratulated the emperor in formal resolutions, and Gustavus V. Fox, assistant Secretary of the Navy, was sent on special mission to convey these resolutions to the Russian government. He was presented to Alexander by Minister Clay in order to deliver his message.<sup>146</sup>

In 1881 another attempt upon the life of Alexander II succeeded. Minister John W. Foster presented resolutions and attended the funeral ceremonies. There was not time enough for the appointment and arrival of a special representative.<sup>147</sup> Two years later, upon the occasion of the coronation of Alexander III, Minister W. H. Hunt and Rear Admiral Baldwin were constituted a special mission "to represent the government of the United States." This action was declared to be "unusual in our intercourse with other countries," and was not without embarrassments growing out of the failure of Russian officials to include Rear Admiral Baldwin among those invited to witness the coronation.<sup>148</sup>

<sup>146</sup> For. Rel., 1866, 413, 414, 416, 417, 422 ff.

<sup>147</sup> Ibid., 1881, 1008, 1010, 1013.

<sup>148</sup> MS. Inst. Russia, XVI, 338, 341, 342; MS. Credences, VI, 171; Chandler, Secretary of the Navy, to Frelinghuysen, March 31, 1883, MS. Misc. Letters; MS. Notes, Russian Legation, VII, 418, 419; Nos. 49, 55, 57, MS. Desp. Russia, XXXVII; see also For. Rel., 1883, 743-745.



At the death of Alexander III in 1894, the American minister informed the Secretary of State that other nations were sending distinguished commissions to the funeral. Thereupon the minister and his staff were constituted "a commission to represent this Government," but without specially assigned rank or title.<sup>149</sup> Before the coronation of Nicholas II in 1896, the United States had begun to send diplomats with the rank of ambassador. Nevertheless, in constituting Minister Breckinridge, Major General Alexander McDowell McCook, and Rear Admiral Thomas O. Selfridge a special commission, they were not given special rank for the occasion. They were, however, given an allowance of five thousand dollars for expenses, nearly twice what had ever before been given for a ceremonial mission.<sup>150</sup>

Before 1893 there were only three other ceremonial missions besides those to Russia—to the coronation of Kalakaua in Hawaii in 1883, to the king's fiftieth birthday, three years later, and to the Bolivar centenary in Venezuela in 1883. In each case the regular minister was commissioned, supported in the first and third instances by naval officers, and in the second by a special commissioner, George H. Bates.<sup>151</sup>

<sup>149</sup> For. Rel., 1894, 558, 560, 561.

<sup>150</sup> MS. Inst. Russia, XVII, 368, 370, 412, 442; MS. Credences, VII, 304, 305, 306; Nos. 251, 304, 332, MS. Desp. Russia, XLVIII, XLIX; Harper's Magazine, XCIV, 345; Harper's Weekly, XL, 618.

<sup>151</sup> Richardson, Messages and Papers, VIII, 174; For. Rel., 1883, 548-552; *ibid.*, 1886, 528-529; Bayard to Bates, Oct. 15, 1886, MS. Inst. Sp. Miss., IV, 4-5.

In 1897, however, a new precedent was set. The United States was invited to send a special mission of congratulation to the celebration of the sixtieth anniversary of Queen Victoria's accession to the throne. The moment was one of tension between the United States and Spain, Britain's friendship was worth especial cultivation, and Ambassador John Hay knew just how to emphasize that fact to Secretary of State Sherman. The United States, moreover, desired to gain recognition as a power of the first rank, and this furnished the occasion for the first ceremonial mission the head of which was an ambassador extraordinary. Whitelaw Reid was selected, and his embassy far outshone earlier ceremonial missions sent by the United States.<sup>152</sup> There was still another, and very practical, reason for sending an ambassador. The United States already maintained an officer of that rank in residence at the court. To send a mission of lower rank would raise insuperable questions of precedence. The precedent set in this instance was decisive in its effect upon practice. It is now settled custom to give rank and title to ceremonial missions. The second instance, which strengthened the precedent, occurred in 1901, when the regular ambassador, Joseph H. Choate, was appointed special ambassador to represent the President at the funeral of Queen Victoria.<sup>153</sup> The next year, 1902, Edward VII was crowned, Alphonso XIII of Spain came of

<sup>152</sup> For. Rel., 1897, 249, 250, 251.

<sup>153</sup> *Ibid.*, 1901, 211.

age, and King Albert of Saxony died. In the first two instances, special embassies were sent. Whitelaw Reid was again appointed ambassador extraordinary. He presented his credentials, was cordially received by the king, but due to the illness of the king the ceremony was postponed, and at the coronation, two months later, the regular ambassador represented the United States.<sup>154</sup>

J. L. M. Curry had been minister to Spain at the time Alphonso was born. In order to hasten the reconciliation between the two countries, it was decided to appoint Mr. Curry ambassador extraordinary to represent the President at the coming-of-age ceremonies.<sup>155</sup> The regular diplomatic officer, Bellamy Storer, held the rank of envoy extraordinary and minister plenipotentiary. This mission, therefore, set the precedent for a special ceremonial mission outranking the regular diplomatic official. It has subsequently become the common practice, where the regular representative is of lower grade than that of ambassador.

The United States maintained no regular mission at the court of Saxony. Andrew D. White, the regular ambassador at Berlin, was detached from his post long enough to attend the funeral of King Albert as the President's personal representative. The use of Ambassador White confirmed the practice of commissioning regular diplomatic officers to attend funerals, since there was rarely time to despatch special embassies.

<sup>154</sup> For. Rel., 1902, 498-499, 499-500, 501-506, 507.

<sup>155</sup> Ibid., 954, 955-959.

There are two notable exceptions. Theodore Roosevelt, who was in Europe in 1910, at the time of the death of Edward VII, was made special ambassador to represent the United States, and attended the funeral ceremonies together with Henry White, who had the rank of minister, and a naval and a military attaché.<sup>156</sup>

Since a month and a half <sup>157</sup> intervened between the death and the funeral of the Emperor of Japan, there was opportunity for the foreign nations to send imposing embassies. In order to demonstrate the friendship of the United States, President Taft despatched Secretary of State Knox, as special ambassador, on the cruiser *Maryland*. He was assisted by Brigadier General John J. Pershing and Rear Admiral Alfred Reynolds.<sup>158</sup> On the death of the Japanese emperor, December 24, 1926, the foreign powers were requested not to send special representatives, so the regular ambassador, Charles MacVeagh, attended the funeral on February 7, 1927.<sup>159</sup> It has become customary, however, to send special embassies to important coronations, inaugurations, centennials, and other ceremonies where the date can be announced in advance.

The first special ceremonial mission to an American state occurred in 1908, when Major General George W. Davis was commissioned "envoy extraordinary

<sup>156</sup> Ibid., 1910, 527-528.

<sup>157</sup> July 30—Sept. 13, 1912.

<sup>158</sup> For. Rel., 1912, 636-642.

<sup>159</sup> *New York Times*, Jan. 9, Feb. 8, 1927.

and minister plenipotentiary on special mission," to represent the United States at the formal opening of the interoceanic railway in Guatemala.<sup>160</sup> In the same year William I. Buchanan, as high commissioner, attended the installation of the Central American court of justice. He had been present at the Washington conference where the convention creating the tribunal was signed, a fact which determined President Roosevelt's choice.<sup>161</sup>

The change in the general practice of representation at ceremonial occasions may be seen in the despatch of special embassies to the three American states which celebrated the centennials of their independence in 1910, as contrasted with the Bolivar centenary, in 1883, which was attended by the regular minister to Venezuela. Major General Leonard Wood was commissioned special ambassador and accompanied the squadron of five cruisers which arrived at the Argentine in May.<sup>162</sup> In September, the United States was represented at the Chilean centennial by the delegates to the Pan-American conference, which had met at Buenos Aires, together with the first division of the Pacific fleet. Henry White had the rank of ambassador, his colleagues that of minister.<sup>163</sup> Mexico also celebrated its centennial in September. Curtis Guild, Jr., as special ambassador to represent the President,

<sup>160</sup> For. Rel., 1908, 404-407.

<sup>161</sup> Ibid., 215-247; above, 591-592.

<sup>162</sup> For. Rel., 1910, 4-11.

<sup>163</sup> Ibid., 189-194.

was accompanied by a special congressional commission, whose members represented the government of the United States and had the rank of minister.<sup>164</sup>

The first presidential inauguration at which the United States was specially represented occurred in Cuba in 1913. The regular minister, Arthur M. Beaupré, was made chief of the mission, whose other members were General Enoch H. Crowder and Dudley Field Malone. All had the rank of minister.<sup>165</sup> The precedent thus set has been followed at most inaugurations, although the regular minister has frequently been given the rank of special ambassador. In two instances, the United States despatched the regular diplomatic officer from a neighboring South American state.<sup>166</sup>

#### IV. *Private and Propagandist Agents*

Another group of agents have been sent to do work which could not well be assigned to an official, at least in his official capacity. Some have been required to make representations on behalf of the President personally,—representations which the President would not feel that it was proper to make in his official capacity. Occasionally it has been necessary to make representations for which the United States could decline to accept the responsibility. Some men have been sent to discuss questions with political leaders

<sup>164</sup> Ibid., 712-716; Stat. at Large, XXXVI, 775, 882.

<sup>165</sup> For. Rel., 1913, 333-339.

<sup>166</sup> See note A at end of chapter.



other than those in power, or they have been called upon to engage in propagating a point of view through letters to the press, by speeches, or by private activities of one sort or another.

Two private agencies exercised on behalf of the President belong to the administration of George Washington. The first was of a very informal character. On March 19, 1791, the President wrote that he concurred with the Secretary of State in the opinion that "circumstances render it advisable to commit to Mr. Short and the Marquis de la Fayette to press in a discreet manner our settlement with the Court of Spain on a broader bottom than merely that of the case of St. Marie—and authorizes him to take measures accordingly."<sup>167</sup>

The second mission was that of James Marshall, the brother of John Marshall, to the King of Prussia on behalf of Lafayette, who was thought to be imprisoned in Prussian territory. The revolution of the 10th of August, 1792, produced a crisis in the personal affairs of Lafayette. His arrest was decreed by the Jacobins, and his army could no longer be counted upon to give him support. He fled, therefore, hoping to reach Holland and find asylum there or in the United States. Falling into the hands of the Austrians at Rochefort, he was detained and imprisoned at Namur, later at Nivelles, thence he was transferred to Wesel, then to Magdeburg, and finally to Olmutz.<sup>168</sup>

<sup>167</sup> Washington Papers, XX, 344.

<sup>168</sup> J. Sparks, *Life of Gouverneur Morris* (Boston, 1832), I, 397-412.



From the moment that his imprisonment became known to the American diplomats in Europe until he was finally released at Hamburg in the presence of Gouverneur Morris on October 4, 1797, activities on his behalf were almost unremitting. Before there was opportunity for the news to reach America, Morris, who was minister to France, William Short, minister at The Hague, and Thomas Pinckney, minister at London, discussed by letter the possibility of doing something in his behalf, but reached the conclusion that they could do no more than make an appeal, couched in the most general terms. Any notion of demanding his release as an American citizen was abandoned.

When the news reached Washington he was deeply concerned. The United States had no minister to Prussia or to the Holy Roman Empire. There was, therefore, no channel already existing through which he could make representations. Any action he took in dealing with those powers must inevitably be indirect or special. In the midst of his perplexity he received a letter from the Marchioness de Lafayette, who explained that though Lafayette had been taken by the troops of the emperor, he was a prisoner of the King of Prussia. She requested Washington to send "an envoy, who shall go to reclaim him in the name of the republic of the United States, wheresoever he may be found, and who shall be authorized to make with the power in whose charge he may be placed all necessary engagements for his release, and for taking him to the United States, even if he is there to be guarded

as a captive.”<sup>169</sup> In replying to this appeal Washington was embarrassed not only by the fact that there was no regular channel of communication, but because he had to take into account as well the bitter division of feeling in the United States with reference to the French Revolution. To have intervened on behalf of one who had deserted the cause of France with the overthrow of the king would have been to invite an outburst of political spleen on the part of the very large portion of the people who sympathized with the Jacobins.<sup>170</sup> From another point of view, moreover, it was difficult to act. Lafayette was, indeed, a citizen of the United States, but he was a citizen, also, of France, and it was in his capacity as a French citizen, not in his status as an American citizen, that he had fallen into misfortune. The United States, therefore, could make no official demand for his release on the ground of his American citizenship.

The most the President could do was to make a private request. Washington was keenly aware of this difficulty. Writing to Thomas Pinckney he said, “As president of the United States there must be a commitment of the government by any interference of mine; and it is not an easy matter in a transaction of this nature for a public character to assume the garb of a private citizen in a case that does not relate to him-

<sup>169</sup> Marchioness de Lafayette to Washington, Oct. 8, 1792, Washington, Writings, ed. Sparks, X, 315-316.

<sup>170</sup> J. Marshall, *The Life of George Washington* (Philadelphia, 1832), II, 387.

self.”<sup>171</sup> He confined himself at first to instructions to the American representatives abroad to express “informally the sentiments and wishes of this country respecting the Marquis de Lafayette.”<sup>172</sup> These measures were unavailing, as Washington and the American representatives had feared they would be, and though Washington had written to the Marchioness de Lafayette, March 16, 1793, that he could not send an envoy, the idea of sending some personal representative did not entirely leave his mind.

James McHenry, who had been aid-de-camp to Lafayette, applied for an appointment in that capacity in letters of March 31, and April 3, 1794.<sup>173</sup> Before these letters were received, however, Washington had already sent James Marshall to Berlin to seek to influence the King of Prussia to release Lafayette. As

<sup>171</sup> Washington to Pinckney, 1796, Washington, Writings, ed. Sparks, XI, 111.

<sup>172</sup> Washington to Jefferson, March 13, 1793, Washington, Writings, ed. Sparks, X, 322. Washington wrote Charles Cotesworth Pinckney, minister to France, Dec. 5, 1796, “My not being able to recollect with certainty, whether I expressed to you my ardent desire, that no favorable occasion might be omitted by you, of signifying how much it is my wish, and the wish of the people of this country, that the friend of it, M. de Lafayette, could be liberated from his confinement, is the cause of my giving you the trouble of this address. Not in my public character have I conceived myself authorized to move in this business. But, in my private one, I have used and shall continue to use every exertion in my power to effect this much desired object; for, surely, if a hard fate has attended any one, this gentleman has met it.” Ibid., XI, 173-174.

<sup>173</sup> Washington, Writings, ed. Sparks, X, 397-398.

intimations had already come that Great Britain was interested in having Lafayette kept in prison, Thomas Pinckney was instructed to do what he could with the British court to secure the intervention of Great Britain on behalf of the prisoner. Marshall was in Berlin early in June, 1794, but found upon his arrival that the King of Prussia had already given Lafayette into the charge of the emperor, who had transferred him to Omultz.

Marshall's mission was a failure.<sup>174</sup> It was followed by a harebrained attempt on the part of some associates of Lafayette to free him. The result was more rigorous confinement. Washington wrote a personal letter to the emperor, May 15, 1796, but it produced no result.<sup>175</sup> Gouverneur Morris, after retiring from office, travelled around Europe and intervened on behalf of Lafayette while in Vienna, with the unfortunate result that the Marchioness, who had joined her husband in prison and had been allowed to write

<sup>174</sup> Instructions to Pinckney concerning Lafayette and Marshall, Nov. 27, 1793, Jan. 10, 16, Feb. 16, 1794, MS. Inst. U. S. Mins., II, 36, 43, 56, 61; despatches from Pinckney, Jan. 10, Feb. 26, 28, March 1, April 2, May 5 (?), June 21, 1794, MS. Desp. Gr. Britain, IV, 236, 252, 256, 257, 264, 267, 282. The last two despatches contained enclosures: Pinckney to Marshall, Pinckney to Prince Henry, March 23, 1794; Marshall to Pinckney, June, 1794; letters from two Prussian officials. There is no direct correspondence between Marshall and the Department of State on file. See also Marshall, *Life of Washington*, II, 387; A. J. Beveridge, *Life of John Marshall* (Boston, 1916-1919), II, 32-34; Bemis, *Jay's Treaty*, 226-227 and n. 1.

<sup>175</sup> Washington, *Writings*, XI, 125-126; Marshall, *Life of Washington*, II, 388.

letters, was deprived of the privilege.<sup>176</sup> The final release of Lafayette appears to have had little or no connection with American efforts on his behalf. It seems to have come, rather, from a request made by Bonaparte during the negotiation of the preliminary treaty of Leoben.

When Dupont de Nemours was returning to France in 1802, President Jefferson asked him to make confidential representations to Napoleon concerning the possession of Louisiana by France. "I trust that you will have it in your power to impress on that government considerations, in the scale against which the possession of Louisiana is nothing. In Europe, nothing but Europe is seen, or supposed to have any right in the affairs of nations; but this little event, of France's possessing herself of Louisiana, . . . which now appears as an almost invisible point in the horizon, is the embryo of a tornado which will burst on the countries on both sides of the Atlantic, and involve in its effects their highest destinies. That it may yet be avoided is my sincere prayer; and if you can be the means of informing the wisdom of Bonaparte of all its consequences, you have deserved well of both countries. Peace and abstinence from European interferences are our objects, and so will continue while the present order of things in America remain uninterrupted."<sup>177</sup>

<sup>176</sup> Sparks, *Life of Gouverneur Morris*, I, 439-441.

<sup>177</sup> Jefferson to Dupont, April 25, 1802; *Writings of Thomas Jefferson*, ed. H. A. Washington (Washington, 1853), IV, 435-

He was also to attempt to conciliate Talleyrand, who was reported to be "personally hostile" to the United States, by assuring him of Jefferson's friendly disposition and that of the party in power. Several months later Jefferson wrote informing Dupont of Monroe's special mission to France in regard to the purchase of Louisiana and asked his cooperation. "The interests of the two countries being absolutely the same as to this matter, your aid may be conscientiously given. It will often perhaps, be possible for you, having a freedom of communication, . . . which diplomatic gentleman will be excluded from by forms, to smooth difficulties by representations and reasonings, which would be received with more suspicion from them."<sup>178</sup>

There was a very large element of this character in the mission of Duff Green to England in 1843.<sup>179</sup> In the course of his visit he not only discussed relations between the United States and Great Britain with Peel and members of his ministry, but went over matters with Lord John Russell, the leader of the opposition, of whom he had more hopes, and whom he expected to see soon in power.<sup>180</sup> He also wrote a series of letters to the *London Times*,<sup>181</sup> and in

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436; see also Jefferson to Livingston, minister to France, April 18, 1802, *ibid.*, 431-433.

<sup>178</sup> Jefferson to Dupont, Feb. 1, 1803, Jefferson, Writings, ed Ford, VIII, 203-208.

<sup>179</sup> Below, 809-811.

<sup>180</sup> Green to Calhoun, Aug. 2, 1843, misdated 1842, "Calhoun Correspondence," 846-848.

<sup>181</sup> Rives, *United States and Mexico*, I, 568-569.



other ways engaged in attempts to discover and to mould opinion.<sup>182</sup> His work was such as would be quite improper for a minister to undertake.

Charles A. Wickliffe, who has already been mentioned as one of the secret agents of Polk to Texas,<sup>183</sup> was to influence Texan opinion in favor of annexation, counteracting the work of the British chargé, Elliott, and of President Jones, of Texas. His mission was to "use such arguments on the proper occasions and to the proper persons," as he might "deem best adapted to convince the authorities and people of Texas that their reunion with the United States" would "promote and secure their own best interests and those of their posterity."<sup>184</sup> Thomas O. Larkin's agency in California, in the same year, 1845, was of precisely the same character.<sup>185</sup> The details of the advice he was to give were varied in accordance with the different status of the region in which he was working, but the general method and purpose were the same.<sup>186</sup>

When California was ceded to the United States after the Mexican War, Congress did not immediately

<sup>182</sup> Green to Calhoun, Sept. 2, 1843, "Calhoun Correspondence," 884-885.

<sup>183</sup> Above, 718-719.

<sup>184</sup> Buchanan to Wickliffe, March 27, 1845, MS. Inst. Sp. Miss., I, 213-215.

<sup>185</sup> Above, 713-717.

<sup>186</sup> Buchanan to Larkin, Oct. 17, 1845, MS. Inst. Sp. Miss., I, 230-234.



provide for the government of the new territory. In 1849 Thomas B. King was sent there to carry despatches and to give assurances that "whatever can be done, by the aid of the Constitution of the United States, the Treaty with Mexico, and the enactments of Congress, to afford to the people of the Territories the benefits of civil government, and the protection that is due them, will be anxiously considered and attempted by the Executive." Since he was "fully possessed of the President's views," he was to suggest that the people of California set up a republican government. He was to send information about the general conditions in the new territories and to report any attempt to alienate the region or to set up an independent government.<sup>187</sup>

The Civil War produced a number of agencies of this type. Seward's political mentor, Thurlow Weed, furnished a notable instance. In 1861 he was sent unofficially, but with letters to Charles Francis Adams and William L. Dayton, and also to Earl Russell and Prince Napoleon.<sup>188</sup> His letter of introduction to Lord Russell reveals his status. "Allow me to introduce to you Thurlow Weed, Esq., an eminent citizen of the State of New York, for many years my intimate personal and political friend. He is not excelled on

<sup>187</sup> Clayton to King, April 3, 1849, MS. Inst. Sp. Miss., I, 262-266; King to Clayton, May 16, 1849, MS. Special Agent Bundle; Serial 577, 31 Cong. 1 Sess., H. Ex. Doc. 59, 1-6; Serial 573, H. Ex. Doc. 17, 9-11, 146.

<sup>188</sup> Weed, *Life of Thurlow Weed*, I, 638-639.

this continent for tact, knowledge, sagacity and experience in public affairs generally, and especially in those of the United States. As with these he unites high personal character, he may be deemed warranted in expecting any opportunity for intercourse with one so deservedly eminent as you are, which your increasing responsibilities may permit.”<sup>189</sup>

Weed not only carried on a campaign designed to win public sentiment to the northern side by articles in the papers and by talks with influential men; he also took a hand in matters distinctly political and diplomatic, though in an unofficial way. He was, for example, in a position to make admissions regarding the right and wrong of the *Trent* affair; he could make suggestions which, coming from the American minister, might have compromised the dignity of the United States or might have prejudiced its diplomatic case. On the other hand, English friends of the Union felt free to pass him important bits of news that they would not have given to the American minister. In France his function was much the same. Learning that Napoleon III was planning to denounce the closure of Charleston harbor by the sinking of the “stone fleet,” he sought to prevent it by reminding one of the emperor’s intimates of the destruction of the harbor of Dunkirk in accordance with the terms of the

✓ <sup>189</sup> Ibid., II, 353; for correspondence concerning Weed, see also MS. Inst. Gr. Britain, XVIII; MS. Desp. Gr. Britain, LXXVIII; MS. Inst. Belgium, I; MS. Desp. Belgium, V.

treaty of Utrecht, and suggesting that it would rouse in France painful memories of a British triumph.<sup>190</sup>

When, in 1863, William M. Evarts was sent over as a legal assistant to Adams, he was given the same sort of informal task, which Seward cryptically conveyed to Adams in the following manner, "I cannot give you the President's expectations of what Mr. Evarts may do, and when he shall do it, [better] than by saying, as I am authorized to do, that we believe he will govern himself in all things with the same deference, respect, and confidence towards you, which were practiced so acceptably by another American gentleman who spent some time usefully in Europe upon an introduction similar to this."<sup>191</sup> Evarts, like Weed, found "opportunities of giving proper views of our affairs and of the objects and prospects of our government to leading men of all parties—prominent in public and in private life,"—among others Palmerston and Disraeli.<sup>192</sup>

The missions of Bishop McIlvaine to England and of Archbishop Hughes to France belong in this category. In November, 1861, Seward instructed Hughes to go to Paris and there cooperate with Dayton in discovering as accurately as possible "the disposition of

<sup>190</sup> See, generally, Weed, *Life of Thurlow Weed*, I, II; Dayton to Seward, "private" despatches, MS. Desp. France, LI, LII.

<sup>191</sup> Seward to Adams, No. 548, April 13, 1863, MS. Inst. Gr. Britain, XVIII.

<sup>192</sup> Evarts to Seward, June 10, 1863, MS. Desp. Gr. Britain, LXXXIII.

the French government, whether friendly or otherwise, and especially its views" on a number of particular points. He was to study how, in cooperation with Mr. Dayton, he could "promote healthful opinions concerning the great cause for which our country is now engaged in arms." He was authorized, in pursuit of this object, to visit any part of Europe that seemed proper.<sup>193</sup> The mission of Bishop McIlvaine to England was of the same character.<sup>194</sup>

Among the various projects suggested during the Civil War was that of bringing Garibaldi to the United States and giving him a military command in the Northern army, following the Lafayette precedent. In July, 1861, Seward instructed Henry S. Sanford, American minister to Belgium, to get in touch with Garibaldi, and later put at his disposal a thousand pounds for the expenses of the general and his suite. Sanford went to Italy and made an effort to induce

<sup>193</sup> Seward to Hughes, Nov. 2, 1861, Jan. 9, 1862, MS. Inst. France, XVI, 81, 98; Seward to Dayton, Oct. 26, 30, Nov. 2, 1861, Sept. 15, 1862, *ibid.*, 64, 66, 80, 251; Nov. 25, 30, 1861, Aug. 28, 1862, MS. Desp. France, LI, LII.

<sup>194</sup> Weed, *Life of Thurlow Weed*, II, 414; manuscript material in Department of State; see also L. M. Sears, *History of American Foreign Relations* (New York, 1927), 313.

During the Great War, Ambassador Page was of the opinion that if a number of distinguished Americans went to England and told the "British public about the United States and especially about the American preparations for war," it "would put new spirit into the British." Such a committee was organized with ex-President Taft as a member. However, President Wilson disapproved of the plan. Hendrick, *Life and Letters of Walter H. Page*, II, 345-348.

Garibaldi to come to the United States, but the negotiation failed.<sup>195</sup> The minister to Great Britain scathingly denounced Sanford's diplomatic activities in Italy.<sup>196</sup> Adams was also annoyed by the Belgian minister's secret activities in England until Seward directed Sanford to discontinue them, November 4, 1861.<sup>197</sup>

A good deal of uncertainty attaches to the nature of the mission of General John M. Schofield to France late in 1865. According to the statement of General Schofield, it was an important, though informal and unofficial, mission. According to Frederic Bancroft, Seward's biographer, the mission was a ruse to get General Schofield out of the United States. Some points in the situation are beyond dispute. General Schofield was on confidential terms with the President,

<sup>195</sup> Instructions, Sept. 6, 25, Oct. 11, 1861, MS. Inst. Belgium, I; despatches, Aug. 14, 29, Sept. 4, 7, 12, 18, Oct. 15, 17, 1861, MS. Desp. Belgium, V; see also July 5, Aug. 15, Sept. 3, 1861, MS. Desp. Antwerp.

<sup>196</sup> Adams, *Studies Military and Diplomatic*, 363-371.

<sup>197</sup> No. 37, MS. Inst. Belgium, I, 140; other instructions, March 26, May 21, 23, July 11, 30, 1861, *ibid.*; Sanford's despatches, MS. Desp. Belgium, V; see also Aug. 2, 1861, MS. Desp. Gr. Britain, LXXVII. Sanford was active in Paris as well as London. On July 29, 1861, the Department of State directed George L. Schuyler to proceed to Europe and purchase arms under the authority and instructions of the War Department. MS. Domestic Letters, LIV, 368; despatches relative to Schuyler, Oct. 24, Nov. 11, Dec. 3, 1861, MS. Desp. France, L, LI; Aug. 16, 1861, MS. Desp. Gr. Britain, LXXVII; Sept. 19, 1861, MS. Desp. Belgium, V.

with General Grant, and with other influential men.<sup>198</sup> He was deeply interested in the Mexican situation and was eager to play a part in ousting the French, a fact that he made evident by his activities in Washington during the early summer of 1865.<sup>199</sup> Among the things suggested by Schofield was that he be given leave of absence from the army to organize a volunteer force, largely of Americans, for service in Mexico against Maximilian.

How thoroughly this plan was approved is not clear, but that it met with support in one influential quarter is evidenced by the fact that Schofield was given the desired leave of absence, and that troops were moved toward the border in accordance with one of the portions of Schofield's scheme.<sup>200</sup> Before the scheme went any further, in midsummer of 1865, Seward sent for Schofield and proposed that he should undertake a mission to France, a proposition to which he assented early in August. There ensued a period of three months before instructions were actually sent to Schofield, who reached Paris early in December.<sup>201</sup> So far

<sup>198</sup> Bigelow to Admiral Goldsborough, Dec. 11, 1865, J. Bigelow, *Retrospections of an Active Life* (New York, 1909-1913), III, 267; Bigelow to Seward, Dec. 8, 26, 1865, *ibid.*, 265-266, 299-300.

<sup>199</sup> J. Schofield, *Forty-Six Years in the Army* (New York, 1897), 379-380.

<sup>200</sup> *Ibid.*, 379-381; J. Schofield, "The Withdrawal of the French from Mexico, a Chapter of Secret History," *Century Magazine*, XXXII, NS., 129.

<sup>201</sup> Schofield, "Withdrawal of the French from Mexico," 130; Seward to Bigelow, Nov. 4, 1865, MS. Inst. France, XVII, 465;



there is no question as to the facts. Indeed, one more assertion may be made with reasonable assurance. Schofield believed implicitly that he was going on a mission of importance, and he remained in that belief while he was there. His letters to the Secretary of State are cast in a tone and are interspersed with remarks which make it evident that he took his mission very seriously.<sup>202</sup>

The other points regarding the mission are disputed. Schofield said the signal for his departure was the receipt, on October 29, 1865, of a despatch, dated October 18, stating that the French government demanded recognition of Maximilian by the American government as a condition precedent to the withdrawal of the French army. "The time had evidently arrived when Napoleon must be informed in language which could not be misunderstood, what was the real sentiment of the government and people of the United States on the Mexican question. It was difficult, perhaps impossible, to express that sentiment in official diplomatic language that an Emperor could afford to receive from a friendly power. It was therefore desirable that the disagreeable information be conveyed to Napoleon in a way which would command his full credence, and which he need not regard as offensive. Mr. Seward's explanation and instructions to me, after several long conversations on this subject,

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Bigelow to Seward, No. 211, Dec. 5, 1865, MS. Desp. France, LIX.

<sup>202</sup> These letters are in MS. Desp. France, LIX, LX.



were summed up in the words: 'I want you to get your legs under Napoleon's mahogany, and tell him he must get out of Mexico.' " <sup>203</sup>

He proceeded to France, where his arrival and the rumors about his mission created something of a sensation and intrigued the curiosity of the emperor, who did not seem overanxious to have an interview.<sup>204</sup> Schofield claimed, however, to have expressed his views to others who repeated them to the emperor. "The fidelity with which the Prince Napoleon and others reported to the Emperor the character of the unofficial message which I had to deliver rendered it quite unnecessary that it should be delivered in person, and quite impossible that the Emperor should be willing to receive it that way." <sup>205</sup>

The point of view of Frederic Bancroft is that Seward, disapproving of the scheme of an army to be raised for Mexican service, "cleverly disorganized the whole undertaking by flattering its chief into believing that his services were needed at once in the field of diplomacy." Seward and Bigelow, American minister to France, laughed in their sleeves at the soldier, side-tracked from his purposes which would have brought trouble, and innocently playing about the fringes of diplomacy while laboring under the delusion that he was an important participant.<sup>206</sup>

<sup>203</sup> Schofield, "Withdrawal of the French from Mexico," 131.

<sup>204</sup> Bigelow to Seward, Dec. 8, 26, 1865, loc. cit.

<sup>205</sup> Schofield, "Withdrawal of the French from Mexico," 132.

<sup>206</sup> Bancroft, Seward, II, 434-435; Moore accepts Schofield's

This point of view is intelligible and appears to have some support from John Bigelow, who in his "Retrospections" remarks upon the order of President Johnson, late in 1866, which directed General Grant to proceed to the Mexican border, and says, "This order was probably issued by the President without Mr. Seward's official approval, if with his knowledge, and was also probably Mr. Seward's motive for sending General Schofield and Governor Morton to Paris to keep both out of the country until it should be apparent that Seward's confidence in the Emperor's determination to withdraw was shared by Congress and the public."<sup>207</sup> The value of this testimony from one of the participants, however, is largely negated by a very obvious confusion. Schofield's mission occurred a year earlier than the date given by Bigelow, before a definite time had been set for withdrawal. At the time when President Johnson issued the order in question, Schofield, far from being in Paris, was in command of a military department.

Leaving out of account the question of how much Schofield actually accomplished, and confining the discussion merely to the matter of purpose or motive, it seems that Schofield's account is more accurate than

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account at face value. Digest, VI, 498-499. C. A. Duniway states the two opinions, Schofield's own, and Bancroft's, and dismisses the matter as "quite obscure." "Reasons for the Withdrawal of the French from Mexico," Ann. Rpt. Am. Hist. Ass., 1902, I, 326, n. b.

<sup>207</sup> Bigelow, *Retrospections*, III, 572, 573.

that of Bancroft. Seward very likely did disapprove of the scheme of sending Schofield into Mexico to organize an army. That plan was brewing during the early summer of 1865. Up to that time Seward had been pursuing a cautious, not to say negative, policy toward Mexico.<sup>208</sup> His attitude was that France was making war upon Mexico, and that the United States should pursue a policy of neutrality. French doubts as to the willingness and the ability of the American government to maintain that attitude were answered by assurances that there was no danger on that point.<sup>209</sup>

When the Department of State was pursuing such a policy, it was out of the question that any such violation of the spirit, if not the letter, of neutrality as was involved in Schofield's scheme should be tolerated, and it is quite possible that the request to Schofield was designed to sidetrack his plan without causing

<sup>208</sup> "From February to July the dominant note in Seward's instructions to Bigelow was one of reiterated assurance that the United States would not pursue any policy of aggression in regard to Mexico." Duniway, "Reasons for the Withdrawal of the French from Mexico," 325.

<sup>209</sup> Bigelow to Seward, No. 107, May 26, 1865, Diplomatic Correspondence, 1865, III, 391; Seward to Bigelow, June 12, 1865, *ibid.*, 394. "So far as our relations are concerned, what we hold in regard to Mexico is, that France is a belligerent there, in war with the republic of Mexico. We do not enter into the merits of the belligerents, but we practice in regard to the contest the principles of neutrality; and we have insisted upon the practice of neutrality by all nations in regard to our civil war. . . . We do not intervene in foreign wars or foreign politics." *Id.* to *id.*, No. 187, June 30, 1865, *ibid.*, 399.

any friction. Color is lent to this point of view by the fact that Schofield was kept idle for three months after accepting the mission. If, when the invitation was given him, Seward had some definite message that he wished Schofield to carry, there would have been no long pause.

As a matter of fact, the months during which Schofield was kept waiting saw the first and tentative moves toward a strong policy on the part of Seward. It was not until early September that Seward took the point of view that "a future, if not an immediate, antagonism between the policies of the two nations seems to reveal itself in the situation in Mexico." Using that for his text, and linking up what he had to say with what he had "already very frequently set forth," Seward launched out upon a discussion which revealed his purpose to put pressure upon the French to withdraw.

The discussion came to the point early in November. Drouyn de Lhuys had suggested that the French would withdraw only if there were assurances that the United States would then recognize Maximilian. Seward's answer was a positive refusal. It was final and flat, and was accompanied by perfectly clear intimations that the United States meant to see the French leave Mexico to work out its own destinies.<sup>210</sup> It was precisely at this juncture that Schofield was sent. At

<sup>210</sup> Seward to Bigelow, No. 300, Nov. 6, 1865, *Diplomatic Correspondence*, 1865, III, 421-422; id. to id., No. 328, Dec. 14, 1865, *ibid.*, 428; id. to id., No. 332, Dec. 16, 1865, *ibid.*, 429.

the very moment when Seward for the first time struck out with force and directness, he sent to France a man who felt strongly that the United States had a duty to press the French government for prompt and unconditional withdrawal, and who was known to hold that view, whose attitude was sufficiently well known to precipitate an excited discussion when he reached France, which extended not only to the newspapers but which involved the emperor himself.<sup>211</sup>

Schofield was despatched, therefore, at a moment when the colloquial instructions he attributed to Seward for the first time represented something like the policy of the United States. There can be no question, moreover, that Seward's conversations with Schofield had thoroughly convinced the general that he was to undertake a difficult task. If Seward was looking to sidetrack a belligerent officer who was likely to make trouble between the United States and France, it would be a peculiar move to send him, fully convinced that he was to convey a message to Napoleon, to the French capital, at a moment when, as Schofield knew, the secretary's policy had come to correspond more nearly with his own desires than it had theretofore. Schofield could have been kept dangling somewhat longer; the mission could have been cancelled; some other method could have been adopted rather than send a "dangerous" man to the most delicate position. There is no doubt, moreover, that Schofield did get

<sup>211</sup> Bigelow to Seward, Dec. 8, 26, 1865, *loc. cit.*; Schofield to Seward, Dec. 8, 21, 1865, MS. Desp. France, LIX.

his legs under the mahogany of Prince Napoleon and express himself with great frankness.<sup>212</sup>

It is true that Bigelow told the emperor and others that Schofield had no mission, but such a statement is not an unusual concomitant of such an informal and unofficial mission, and it is significant that every denial that he had a mission was linked with an emphasis upon the fact that he was in the confidence of the American government and knew the temper of the American people, and that what he had to say on public questions should be listened to with that in mind. Schofield, if charged with any message, was sent to say things which could not be said or be received officially. The very basis on which the service rested was a desire to present the views of the United States without having to accept full responsibility—and thus to protect the dignity of both governments.

Governor Oliver P. Morton, of Indiana, also claimed to have a mission connected with the removal of French troops from Mexico. When he went abroad late in 1865, he was instructed by the War Department to report on systems of sanitary regulations, transportation, and subsistence of troops in the armies of Germany, France, and Italy.<sup>213</sup> He stopped in Washington on his way and later stated that President

<sup>212</sup> Schofield to Seward, Jan. 24, 1866, MS. Desp. France, LX; other despatches, Jan. 11, 19, Feb. 21, April 12, 1866, *ibid.*; instructions, Feb. 8, 18, 20, March 15, April 24, 1866, MS. Inst. France, XVII; Schofield's papers, Library of Congress.

<sup>213</sup> W. D. Foulke, *Life of Oliver P. Morton* (Indianapolis, 1899), 457, n. 1.



Johnson requested him informally to give intimations to Napoleon that he must withdraw the French troops from Mexico. His mission was strictly secret, being confidential even from the American minister to France, Bigelow. Morton saw the emperor through the courtesy of Baron Rothschild. Like the mission of Schofield, the purpose and importance of that of Morton have been variously interpreted by different commentators.<sup>214</sup>

A wholly different temper pervaded the mission sent to Russia in 1917, yet it belongs in the same group. It was designed to carry a message to the government and people of Russia. To give sincerity to the message, the personnel represented many phases of American life. To give it dignity and impressiveness, in the hope that the message would be spread abroad and be effective, the head of the mission, Mr. Elihu Root, was given the rank of ambassador, and the other members the rank of minister plenipotentiary. One of its members described the mission as "a grand-stand play." Its purpose was not to negotiate but to encourage and inspire. It was to mould Russian public opinion in a sense favorable to continued participation in the war. The business was one of propaganda, or

<sup>214</sup> Ibid., 457-460 and n. 1; Bigelow, *Retrospections*, II, 313-315; III, 239, 573.

. In 1862 R. W. Shufeldt had had some sort of confidential mission to Mexico connected with the French occupation of that country. Paullin, "Opening of Korea", 477, n. 2.



of counter propaganda against the efforts of the Germans.<sup>215</sup>

### V. *Agents Sent to Assist and Advise the Regular Representatives*

Another group of executive agents has been sent to assist and advise the regular representatives. Occasionally an agent was employed to make the representations of the diplomatic officer more effective. Or a special agent was sent to deal with some local problem when the regular representative had a large territory to cover. At other times the nature of the business made it desirable that an agent be despatched to several states instead of directing each regular diplomatic officer to make representations.<sup>216</sup>

<sup>215</sup> *New York Times*, April, May, June, July, Aug., 1917, passim, Dec. 14, 1917, Feb. 16, March 7, 1918; Cong. Record, 65 Cong. 2 Sess., LXI, 1085, 1090-1091; Hearings before the Committee on Expenditures in the State Department, House of Representatives, on House Resolution 132, 66 Cong. 1 Sess., a Resolution to Investigate re Payment of Interest and Principal on Russian Bonds, June 26—July 18, 1919, pt. I, 12, 48, 50, 51, 52, 67, 68.

<sup>216</sup> Closely related to this group are the special agents sent to perform specific ministerial acts. In 1797 Captain Timothy Newman was directed by the State Department to deliver the frigate built by the United States as tribute to Algiers, subject to the orders of Consul O'Brien. MS. Inst. U. S. Mins., IV, 196-198. Captain William Maley had a similar mission the following year. *Ibid.*, 369, 371. In 1885 Lieutenant William H. Schuetze was instructed to take charge of and deliver presents to the officers and subjects of Russia who had assisted the survivors of an American arctic expedition and the parties sent by

Soon after Polk became President, his intimate friend, Archibald Yell, was despatched to Texas to carry the news of the resolution regarding annexation, which had been passed in the last days of the Tyler administration. Yell was also to assist Chargé Donelson in getting Texas to agree to the American proposals.<sup>217</sup>

The treaty at the close of the Mexican War failed to provide for a right of way across the isthmus of Tehuantepec. Later a treaty for that purpose was negotiated and approved by the United States. In order to encourage favorable action on the part of Mexico, William M. Burwell was publicly despatched in 1852. The treaty was rejected before he arrived. However, he had an interview with the president after he had conferred with Minister Letcher and determined the matters to be discussed.<sup>218</sup>

Another mission during the same year also involved a treaty concerning a right of way between the two oceans. Secretary of State Webster and the British minister, Crampton, had negotiated an agreement, but

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the United States to relieve them. For. Rel., 1885, 657-658, 665-667, 670, 672, 674.

<sup>217</sup> Smith, *Annexation of Texas*, 353-354, 433, 435; see also Polk, *Diary*, II, 451-452.

H. M. Watterson was a special agent to Buenos Aires the same year. Serial 481, Doc. 11, 25.

<sup>218</sup> Instructions, March 22, 1852, MS. Inst. Mexico, XVI, 317-325; despatches from Burwell, April 5, 10, May 12, 1852, MS. Special Agent Bundle; from Letcher, April 8, 25, 1852, MS. Desp. Mexico, XV.

it was necessary that the consent of Costa Rica and Nicaragua be secured. For that purpose Robert M. Walsh was sent to Costa Rica. He was given a letter to the minister of foreign affairs and informed of the boundary dispute between the two countries. The American chargé to Nicaragua, John B. Kerr, was entrusted with the task of securing Nicaragua's acquiescence. Costa Rica consented to the proposed treaty, but Nicaragua was unwilling to accept the agreement.<sup>219</sup>

A few years later another mission resulted from divergent interpretations of the treaty of 1846 between the United States and New Granada. Daniel E. Sickles was despatched to Panama in 1865 with instructions that "the one main object of your mission is an understanding, clear and explicit, with regard to the right, we insist upon, of transporting our troops over the Isthmus of Panama, either to or from our possessions on the Pacific. We are in condition to

<sup>219</sup> Instructions to Walsh, April 29, May 4, 13, Nov. 18, 24, 1852, MS. Inst. U. S. Mins. Am. States, XV, 123-129, 135-136, 143, 144; instructions to Kerr, April 30, May 4, 13, June 16, Nov. 22, 1852, *ibid.*, 129-137, 142; despatches from Walsh, May 28, June 11, 25, Aug. 15, Nov. 19, 1852, MS. Secret Service Vol., I; despatches from Kerr, July 30, 31, 1852, Feb. 4, 1853, MS. Desp. Nicaragua, I; Serial 819, 34 Cong. 1 and 2 Sess., Sen. Ex. Doc. 25, 70-73, 80-81, 84-92, 97, 98, 132; Serial 1885, 46 Cong. 2 Sess., Sen. Ex. Doc. 112, 11.

Four years later R. C. Murphy served as a special agent at Shanghai, where he secured a settlement of a question regarding duties. Serial 918, 35 Cong. 1 Sess., Sen. Ex. Doc. 2, 26; Serial 941, H. Ex. Doc. 4, 30.

make the guarantee we are pledged to effective, and we expect, in return, the reciprocal benefits arising therefrom, also pledged to us, by treaty, by the Republic of Colombia." After leaving Panama, Sickles was to "proceed to Bogota and there coöperate" with Minister Burton for the same purpose. The special agent received assurances that "satisfactory instructions would be given to the authorities on the Isthmus with regard to the transit of United States troops."<sup>220</sup>

When it became known that Senator James R. Doolittle was going to Russia on business, Seward instructed him to stop in Copenhagen where negotiations regarding the transfer of the Danish West Indies were pending. It is difficult to determine the exact extent of his powers, but he was instructed, April 30, 1867, to report on the obstacles that were holding up the business, and the matter was freely discussed with the Danish secretary of war. The report that Doolittle was to purchase the islands was widely circulated and caused considerable embarrassment to Minister Yeaman. The United States Senate failed to ratify the treaty which was finally concluded.<sup>221</sup>

<sup>220</sup> Moore, Digest, III, 127; instructions, Jan. 6, Feb. 10, 21, March 18, 1865, MS. Inst. Sp. Miss., II, 29-36.

<sup>221</sup> Magazine of American History, XXI, 179-181; Yeaman to Seward, June 7, 17, 20, July 4, Aug. 8, Sept. 2, 1867, MS. Desp. Denmark, IX. O. R. Seward stated that Doolittle was to communicate with the Danish officials concerning the transaction, and if the arrangements were satisfactory he was to conclude the matter. "The offer which Senator Doolittle had been empowered to repeat" was accepted and the decision was tele-

In 1882 Captain S. L. Phelps was sent to Nicaragua as a special agent, since the range of duties of the minister to Central America was too wide. He was to "take such steps as may seem advisable" to secure for the United States the exclusive right "to use certain Islands in the Lake of Nicaragua as a coaling and refitting station for the Navy, and the right to use the lake itself as an anchorage and rendezvous for our vessels of war." Phelps was not authorized to conclude a treaty but was to discuss the subject and reach an agreement. He was directed to confer with Minister Hall, who was instructed to present him to the authorities of Nicaragua. "It is of course understood that you will act in harmony and it is not doubted that Mr. Hall, a most experienced and valuable officer, will aid you in any way in his power."<sup>222</sup>

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graphed to Washington. "A Diplomatic Episode," *Scribner's Magazine*, II, 591-592. Bancroft does not assign any such important rôle or any such result to Doolittle's mission. *Life of William H. Seward*, II, 485.

In 1899, when the matter of purchasing the Danish West Indies was again under consideration, Henry White, secretary of embassy in London, was despatched to Copenhagen, discussed the subject with the minister of foreign affairs, and reported to the Secretary of State. *For. Rel.*, 1917, 457-459, 462-463, 523.

<sup>222</sup> Instructions, Sept. 23, 1882, MS. Inst. Sp. Miss., III, 347; other manuscript material in Department of State; see Moore, *Digest*, III, 197.

The previous year William H. Trescot had had two special missions. In February he was instructed to go to New York to continue the discussions begun by the Secretary of State with the Colombian minister concerning the modification of a previous treaty providing for interoceanic communication through Pan-

The sensitiveness which the regular diplomatic officers frequently displayed at the presence of special agents was particularly pronounced in the case of the mission of Rear Admiral Bancroft Gherardi to Haiti in 1891. Frederick Douglass, the minister resident, was a negro who had proved himself a capable representative. However, when it was determined to undertake negotiations to secure a coaling station for the United States at the mole St. Nicholas, Gherardi was despatched. Douglass learned about the negotiations from him directly and for the first time, and was instructed to cooperate with his "newly-constituted superior." Later a credence signed by the President and Secretary of State provided for joint negotiations, but the lease was not obtained.<sup>223</sup>

In 1881 Secretary of State Blaine had taken steps to call a conference of American states, but the matter was dropped by his successor, Frelinghuysen. It was not until Cleveland's administration that an act of Congress provided for such a conference. The invitations extended to the various countries by the regular diplomatic officers were well received, but in order to

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ama. A protocol was signed before the Colombian minister sailed. Trescot was directed to prepare a report for the American minister to Colombia. For. Rel., 1881, 371-376. In November he was made a special minister to Chile, Peru, and Bolivia. MS. Precedent List, 71-72.

<sup>223</sup> F. Douglass, "Haiti and the United States," *North American Review*, CLIII, 341-345, 450-455; manuscript material in Department of State; Sears, *History of American Foreign Relations*, 405-406; see also For. Rel., 1891, 651-653.



make definite plans and formulate a program it was desirable to know which states would be represented and to learn their attitude toward the various topics to be discussed. Therefore, in 1889, John G. Walker was made a special commissioner to several of the Latin-American countries. His selection was based on the facility with which he used Spanish and his experience in South America. He was given letters accrediting him to Peru, Chile, the Argentine Republic, Uruguay, Paraguay, Brazil, and Venezuela, but since the mission was confidential in character, he was directed not to present them if the desired interviews could be secured through personal introductions by the regular diplomatic officers. In addition to gaining information, he was to attempt to remove any objections to participation that might arise. He went to Chile, Peru, the Argentine Republic, Brazil, and Uruguay, where the invitations to the conference were accepted.<sup>224</sup>

John W. Foster was entrusted with a mission of similar character in 1897. He had acted as United States agent at the Paris fur seal arbitration in 1893. That award was to come to an end in 1898 and the United States desired definite modifications. The Department of State suggested an international conference on the subject, and Foster was sent to England and Russia to consult with the authorities there. The

<sup>224</sup> Instructions, Jan. 18, 1889, MS. Inst. Argentine Republic, XVI, 463; June 1, 1889, MS. Inst. Sp. Miss., IV; MS. Credences, VI; despatches, April 3, 5, 24, May 11, June 15, 1889, MS. Desp. Argentine Republic, XXVII.



American ambassador to Great Britain arranged several interviews for Foster, and a conference of experts was finally agreed upon, although England declined to admit representatives from Russia and Japan. When the conference met in Washington in the fall of 1897, Foster, as well as Hamlin and Jordan, attended on the part of the United States. At the close of that conference Foster tried to arrange for a final settlement of the fur seal issue by means of a treaty agreed to by representatives of Great Britain, Canada, and the United States. He did not meet with immediate success, however, since Canada refused to a complete suspension of the killing of seals, and wished to include several other subjects in the negotiations, such as commercial reciprocity, immigration, and fisheries.<sup>225</sup>

A statute of March 3, 1897, authorized the President "to appoint one or more special commissioners or envoys to such of the nations of Europe as he may designate to seek by diplomatic negotiations an international agreement" concerning bimetalism. In May Senator Edward O. Wolcott, Adlai E. Stevenson, and Charles J. Paine were made special envoys to Great Britain, France, and Germany. The regular diplomatic officers cooperated with them during their negotiations in Europe.<sup>226</sup>

<sup>225</sup> Moore, Digest, I, 907-923; see above, 759, n. 144, 603. For. Rel., 1897, 291, 299-313, 320-324.

<sup>226</sup> MS. Inst. Sp. Miss., IV, 193; For. Rel., 1897, XXIII; Stat. at Large, XXIX, 624-625. Previously three special agents had been sent to Europe to investigate the monetary situation. See below, 820, n. 277.

The Boxer difficulties in China precipitated one of the most notable agencies of assistance and advice. The Department of State was cut off from communication with Minister Conger in Peking, and Rockhill, who had, to an unusual degree, the confidence of both the President and the Secretary of State, was instructed to proceed to China, report on the situation, confer with Conger "and make joint recommendation as to action now and for the future."<sup>227</sup>

He was given diplomatic status in order to carry with it diplomatic privileges and immunities, and in February, 1901, was assigned plenipotentiary powers,<sup>228</sup> and authorized to conduct, on the part of the United States, negotiations with China and the powers for a settlement of pending issues.<sup>229</sup>

Commissioner Rockhill reached Peking, September 18, 1900, and at once took a very active part, cooperating effectively with Minister Conger in Peking, and then proceeded to visit the viceroys of Nanking and Wu-chang "for the purpose of thanking them . . . for the perfect manner in which they and the other

<sup>227</sup> Adeo to Conger, Aug. 26, 1900, For. Rel., 1901, App., 340; For. Rel., 1900, 156, 157; *ibid.*, 1901, App., 9. He was appointed commissioner July 19, 1900.

<sup>228</sup> Moore, Digest, IV, 440, 457.

<sup>229</sup> Conger displayed the usual sensitiveness of ministers. He remarked that other powers had not sent assistants, "and I should not like to be the only one for whom such support is deemed necessary." Nevertheless he said he would welcome Rockhill's "assistance." Conger to Hay, Oct. 25, 1900, For. Rel., 1901, App., 43.

viceroys had maintained peace, and the friendly spirit they and their provincial administrators were showing foreigners." After his return to Peking, Rockhill was put in charge of the interests of the United States in the difficult negotiations, thus superseding the minister in the exercise of his most important functions. Minister Conger took leave of absence from his post and visited the United States.<sup>230</sup> Immediately after the signature of the protocol of settlement, September 7, 1901, Commissioner Rockhill left for the United States, leaving Minister Conger again in full charge.<sup>231</sup> The peculiar fitness of the commissioner, and the extraordinary situation which existed, constitute the justification of a mission most unusual in its character and powers.<sup>232</sup>

In the fall of 1906, while Secretary of State Root was in South America, a crisis occurred in Cuban affairs. Without delay, President Roosevelt despatched Secretary of War Taft and Assistant Secretary of State Bacon as special representatives to investigate the situation. As a result, the temporary administration of the Cuban government was put in the hands of Mr. Taft as provisional governor. Later this position was transferred to Charles E. Magoon, under the direction of the Secretary of War. While Mr. Taft was provisional governor Minister Morgan transmitted

<sup>230</sup> For. Rel., 1901, App., 93.

<sup>231</sup> Conger to Hay, Sept. 10, 1901, *ibid.*, 382.

<sup>232</sup> Rockhill's final report is dated Nov. 30, 1901, *ibid.*, 3.

to him directly information relative to the general situation in Cuba. However, when Magoon assumed office, Morgan wrote that the legation would "resume its political correspondence with the department and its report upon Cuban affairs without reference to those which the provisional governor may furnish the insular bureau of the War Department." <sup>233</sup>

In 1911 civil war over the selection of nominees for the presidency of Honduras seemed imminent. The American minister reported that the president desired the United States to approve the designates. Consequently, Thomas C. Dawson, minister to Panama, who had long experience with Caribbean problems and special competence in solving them, was made a special commissioner to investigate and assist in an equitable adjustment of the controversy. Representatives of the government and insurgent parties met with him on board an American warship. After several conferences they agreed on a candidate who became constitutional president, March 16, 1911. <sup>234</sup>

<sup>233</sup> For. Rel., 1906, 481-494. In 1917 and 1920 Henry H. Morgan was despatched as a special agent to investigate political affairs in Cuba. Register of the Department of State, 1922, 158.

<sup>234</sup> For. Rel., 1911, 298-305. From that time on many special agents were despatched to the Central American states. In 1914 the President appointed Davis to go to Guatemala to investigate, report on, and, if possible, adjust the controversies about railroad matters in which American citizens were interested. The next year Kenneth Walker was sent to Honduras on a mission of a political character. A year later John F. Dulles went to Nicaragua, reported on the revolution and political situation in

Like the states of Central America, the Dominican Republic and Haiti have frequently been visited by special agents. In 1913, Assistant Secretary of State Osborne was sent to Santo Domingo in order to give special force to the warning that the republic must respect the terms of its treaty with the United States. He insisted that expenditures be brought within the revenues, and was assured that the matters of which he complained would be reformed. Nevertheless, the assurances were soon forgotten, and the financial situation steadily grew worse.<sup>235</sup>

During the same year a commission of three from the Department of State,<sup>236</sup> together with thirty assistants, proceeded to the Dominican Republic "to lend by their presence moral support of the efforts that President Bordas has so freely pledged himself to

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Costa Rica, and investigated financial matters in Panama. Walter C. Thurston was "designated special agent of the Department of State in Guatemala with the honorary rank of chargé d'affaires, December 22, 1917." Register of the Department of State, 1918, 170. The next year Freeman went to the same country because the commercial relations with the United States were prejudiced by administrative regulations. During that year Severo Mallet-Prevost was despatched to Guatemala, Honduras, and Nicaragua. A month later Edward W. Ames had missions to the same countries. The following year he made special investigations in Honduras. Richard D. Meader reported on political conditions in Guatemala in 1919. Henry L. Stimson's mission to Nicaragua in 1927 is an example of this same sort of agency.

<sup>235</sup> For. Rel., 1915, 322.

<sup>236</sup> Messrs. H. S. Gibson, F. A. Sterling, and J. H. Stabler.

make to keep the election free and uninfluenced in all respects." <sup>237</sup> The American minister, J. M. Sullivan, was instructed "to confer with them on important matters." <sup>238</sup>

Advice, assurances, observation did not suffice to keep the peace, and seven months after the commission of observation completed its labors, a new commission was sent to intervene and bring peace. The American minister was not only untrained, but notoriously unfit; later on, as a result of an investigation, he was relieved of his post. Thus early, however, he was superseded, in effect, by having a commission of three, of which he was a member, but of which another acted as chairman. Ex-Governor John Franklin Fort, of New Jersey, and Charles Cogswell Smith, an attorney of Portsmouth, New Hampshire, were the other members. They left for Santo Domingo in August, 1914, supported by a regiment of marines. They were sent to restore order in accordance with a plan attributed by Secretary Bryan to President Wilson. The proposals involved the resignation of President Bordas, the constitution of a provisional government, and new elections under American observation. If the elections proved satisfactory to the Department of State, the new government was to be recognized; if unsatisfactory, new elections were to be held. While these stipulations were mere "proposals," the commis-

<sup>237</sup> Bryan to Sullivan, Dec. 7, 1913, For. Rel., 1913, 443-444; id. to id. Dec. 10, 1913, *ibid.*, 446.

<sup>238</sup> *Ibid.*, 441-443, 446-448.



sion was instructed to give "no opportunity for argument . . . to any person or faction," but, having presented the plan, "see that it is complied with." Acting under those instructions, the plan was made fully operative, and Messrs. Fort and Smith proceeded to Haiti upon another mission.<sup>239</sup>

Intervention in Haiti began in 1915, and, as in all such instances, it proved easier to initiate than to terminate. To negotiate a treaty with a nation controlled by the armed forces of the United States offered problems concerning free will that might well have daunted a philosopher. It is not surprising, therefore, that anomalies should develop in the diplomatic relations between the two nations. Brigadier General John H. Russell, who had commanded the marines in Haiti, was sent there early in 1922 in a different capacity,—as high commissioner, and with diplomatic rank as envoy extraordinary. There was already an American minister, Mr. Bailly-Blanchard, who held office until his death in 1925.<sup>240</sup> General Russell was sent ostensibly to "investigate," but ultimately the further information was vouchsafed that he was to supervise American officials, appointed under the treaty with Haiti, in the performance of their

<sup>239</sup> For. Rel., 1914, 246-254; International Year Book, 1914, 207; American Year Book, 1914, 79-80, 114; New York Times, July 11, 18, 19, 24, 26, August 8, 11, 22, 23, November 25, 1914; G. Marvin, Watchful Acting in Santo Domingo, World's Work, XXXIV, 203-218.

<sup>240</sup> At the time of his death he was "Minister to Haiti, temporarily detailed to the Department of State." Register, 1926, 87.



duties, and, generally, to coordinate American activities in Haiti. He presented a report at the end of the first year, and his annual reports have subsequently been published regularly. A separate legation became superfluous, and after the death of Minister Bailly-Blanchard no successor was named.<sup>241</sup>

The crash in sugar which followed the war pricked the bubble of Cuban prosperity. As the financial condition got steadily worse, the political aspect clouded likewise. Finally both situations reached an acute stage and heroic measures seemed necessary. Under the Platt Amendment the United States has special rights in Cuba. General Enoch H. Crowder, who had assisted Cuba in drafting electoral and other laws, was chosen to proceed thither. He practically superseded the American minister, Boaz W. Long, and at times exerted a diplomatic pressure so severe as virtually to amount to dictation. The maladies of Cuban politics and finance required drastic remedies. Having gone to Cuba in 1920, General Crowder remained; in February, 1923, the rank of the regular mission was

<sup>241</sup> Who's Who, XIV, 1664; Annual Reports; *New York Times*, Index; a resolution by Senator Walsh, of Montana, requested the President to reveal the instructions to General Russell; President Harding declined. Senator King introduced a resolution (67 Cong. 2 Sess., S. Res., 249) proposing that the Senate Committee on Judiciary "investigate the question as to the power of the President, under the Constitution, to appoint an ambassador extraordinary to Haiti without the advice and consent of the Senate," but it failed of passage.

changed, and he became the first ambassador to Cuba.<sup>242</sup>

The best known executive agent of recent years is Colonel E. M. House. His intimate personal relationship with President Wilson, his low opinion of Secretary of State Bryan, and the exciting times during which he was active, combined to make him a figure as picturesque as he was important. The variety, the continuity, and the informality of his activities made it difficult to tell in how far he was acting under specific instructions, written or verbal, and in how far he was exercising a private initiative which he expected the President to approve when desirable.<sup>243</sup> He began to function diplomatically as soon as President Wilson took office. In July, 1913, he was in London and Ambassador Page described him to Sir Edward Grey as "the silent partner" of President Wilson.<sup>244</sup> He engaged in the discussion over Panama tolls, then the principal diplomatic issue between the two nations. The next year he was again in Europe to discuss projects for world peace with statesmen in Great Britain, France, and Germany. He went without

<sup>242</sup> *New York Times*, see Index, 1920, 1921, 1922, 1923. There is a great deal of magazine discussion.

<sup>243</sup> The fullest account of his activities before the United States entered the war is in Charles Seymour, *The Intimate Papers of Colonel House* (2 vols., Boston, 1926); see also B. J. Hendrick, *Life and Letters of Walter Hines Page* (3 vols., Garden City, 1922-1925); his day-to-day activities may also be followed, in contemporary news, in *New York Times*, Index.

<sup>244</sup> Hendrick, *op. cit.* I, 245.

formal credentials, but with every evidence of a confidential relationship with the President which transcended their necessity. He did, however, carry a personal letter from the President upon the subject he had in hand. . . .

Between trips to Europe, Colonel House spent a good deal of time in Washington, and also conducted correspondence from his homes in New York and Pride's Crossing, which made of his study a sort of vest-pocket department of state.

Early in 1915, Colonel House was again in Europe, on this occasion with a proposal for mediation which had been brewing during some months of informal diplomacy so secret that even Ambassador Page was in the dark. Elaborate pains were taken to conceal the real object of his mission from the public, and the President twice was quoted as denying that he was abroad on a mission concerned with peace.<sup>245</sup> It proved abortive; and the destruction of the *Lusitania* came just in time to deliver the *coup de grace* to his efforts.

Nevertheless, before the year was out he was appointed a special agent to consult with ambassadors and ministers in Europe, and proceeded to England and the continent for that purpose. When the United States entered the war, his activities took on a more public character. He was appointed to have charge of the "Inquiry," by which data were gathered for the use of the commission to negotiate peace. He was

<sup>245</sup> See *New York Times*, Feb. 10, Mar. 31, 1915. See also *ibid.*, Apr. 30, June 14, for denials by Col. House, himself.

appointed with others to the interallied conference of 1917, was a member of the Supreme War Council, and of the Peace Commission. During part of the time he held the rank, though not the office, of ambassador extraordinary. In terms of the length, variety, and importance of his service, Colonel House is by a wide margin the most important executive agent in our history. Political peculiarities in the composition of the administration, the personal predilections of the President, the eagerness of an amateur diplomat, and the abnormal situation produced by the Great War combined to make such a record possible.<sup>246</sup>

During the Great War an unusually large number of agents was employed. Many assisted in the embassies and legations in Europe where the diplomatic duties were greatly increased when the interests of other nations were entrusted to the United States. Others were sent to make special representations or investigations. To this latter group belonged the agents of the war trade board which supervised exports, imports, and licenses to trade with enemy firms. These special assistants of the department, unrestricted in regard to travel and regular and pressing duties, were able to coordinate the information available to both diplomatic and consular officers, and at the same time make independent investigations.

<sup>246</sup> The account is compressed in this place because it is given fully in the works of Messrs. Seymour and Hendrick.

Many of the special agents were men in the diplomatic service.<sup>247</sup>

Another group of agents was sent to supplement or virtually to replace the regular representatives because they no longer possessed the full confidence of the administration. Ordinarily a diplomatic officer who no longer represents the administration is requested to resign or does so voluntarily. The natural result is that the number of agents sent to work alongside or above the regular officer is small. Another result, equally natural, is that usually, when an agent is sent under these circumstances, the resignation of the minister follows promptly. Diplomatic officers have almost uniformly shown some sensitiveness when special agents were sent to assist them, even though it involved no reflection upon either their abilities or standing.<sup>248</sup> The sensitiveness has, of course, been much greater when some such reflection was implied.

The first noteworthy instance of a mission of this character followed the retirement of Daniel Webster from the post of Secretary of State, in May, 1843. When he resigned a distinct change took place. Webster had been interested in settling the big outstanding questions with England; he was not ready to push for the annexation of Texas, or for free trade, and he was

<sup>247</sup> See Stat. at Large, XXXVIII, 778; *New York Times*, Oct. 15, 1917; manuscript material in Department of State. See note B at end of chapter.

<sup>248</sup> On the feelings of Charles Francis Adams, see his life by his son, Charles Francis Adams, in the American Statesmen Series (Boston, 1900), 352-356.

not vastly concerned about British propaganda for emancipation in Texas. Edward Everett, minister to Great Britain, was Webster's man. He had been suggested to Tyler by Webster and was in thorough agreement with Webster's policies. His interests ran along the same channels.<sup>249</sup> But prevention of emancipation in Texas, annexation, and a free trade treaty with England were very much in the minds of many of the southern group that clustered about Tyler. Among these were Hugh S. Legaré, of South Carolina, the Attorney General, who was Secretary of State *ad interim* for about five weeks in May and June, 1843, and Abel P. Upshur, of Virginia, who took over the office of Secretary of State, June 24. It may very well have seemed to these men that Everett was not a sympathetic person with whom to discuss matters where their policy was markedly different from that of Webster. It is not surprising, therefore, to find an agent in London, working beside Everett but not in close relationship with him.

The agent was Duff Green. He was closely affiliated with the group, a southerner, long active in politics and journalism. He was an intimate of Calhoun, whose son had married Green's daughter. It seems, also, that he was on good terms with Tyler, and he certainly was close to Upshur. With Webster he was not affiliated at all. It is true that during Webster's occupancy of the Department of State, Green was

<sup>249</sup> G. T. Curtis, *Life of Daniel Webster* (New York, 1870), II, 83-84; H. C. Lodge, *Daniel Webster* (New York, 1899), 246.



twice appointed a bearer of despatches,<sup>250</sup> and that during his visits to Europe he discussed matters of state with important men and wrote letters to the *London Times* on questions of public concern. But his accounts of these conversations were addressed to Calhoun,<sup>251</sup> not to Webster. There is, indeed, no indication in the correspondence of Webster that he and Green had any contact of importance; and certainly their relations were not confidential. Their interests and methods were as far as possible apart. While, therefore, there is an appearance of continuity when Green was sent to Europe shortly after Webster's retirement, in reality the new mission marks a change. He now represented persons in power, seeking objects which the minister to England was not likely to forward with any enthusiasm.

The rôle that he was designed to play is fairly evident from the use that was made of his reports. One of them was made the basis of a move for the very prompt annexation of Texas, the ground being that Great Britain had antislavery designs on foot.<sup>252</sup> Reports from the regular minister on the same topic were by no means as alarming in character and would

<sup>250</sup> Serial 446, H. Rpt. 484; "Correspondence of Calhoun," 597.

<sup>251</sup> "Correspondence of Calhoun," 842-843.

<sup>252</sup> Serial 444, Doc. 271, 18; see, for letter along the same lines, Green to Calhoun, Aug. 2, 1843, misdated 1842 (Rives, *United States and Mexico*, I, 569 n.), "Correspondence of Calhoun," 846-848.



not have served the same purpose at all.<sup>253</sup> Without going to the length that Benton did in charging a great plot, there is enough evidence, both in the incidents connected with Green's sojourn in London, and his later activities at Galveston, to make it very reasonable to suppose he was sent to England to do work which the regular minister, Everett, would probably not do as sympathetically.<sup>254</sup>

There was no further employment of a special agent on the basis of distrust of the regular agent until 1886. In that year Samoa came in for a good deal of diplomatic attention. The United States had a consular representative, Berthold Greenebaum, at Apia. Inasmuch as no legation was maintained there, he had been charged with many duties of a political character in addition to his ordinary duties with reference to commercial and kindred matters. In the events which produced a crisis, his behavior was such as to impair the confidence of the Secretary of State in his fitness for dealing with the problem, and a special agent was sent.

<sup>253</sup> Garrison, "Texan Diplomatic Correspondence," II, pt. 2, 1144-1146, and other documents there cited.

<sup>254</sup> On this mission see, in addition to previous citations, Benton, *Thirty Years' View*, II, 600-613; Smith, *Annexation of Texas*, 117; Rives, *United States and Mexico*, I, 568-569; Reeves, *Diplomacy under Tyler and Polk*, 124-125, 129, n.; Richardson, *Messages and Papers*, IV, 328. There is little manuscript material in Department of State: despatches of Green, Aug. 3, Nov. 3, 1843, MS. Special Agent Bundle; references to him, June 13, 1843, MS. Inst. Gr. Britain, XV, 93; Aug. 17, Nov. 3, 16, 1843, MS. Desp. Gr. Britain, LI.

The situation grew out of what appeared to be an effort on the part of the German consul at Apia to destroy the neutrality of Samoa by a process of erosion. European nations had been absorbing control over Pacific islands. The Fiji, New Hebrides, Marshall, and Gilbert groups, and Tahiti had all been absorbed into the European system of outposts. The United States had more or less blocked off the similar absorption of the Samoan Islands by the treaty of 1878 which "set the precedent of recognizing the independent nationality of the native government of the group." After this, Great Britain and Germany made treaties with Samoa, and the islands enjoyed "a guaranteed neutrality." In 1879 a convention was signed by Great Britain, Germany, and the United States which provided for a municipal government of Apia. The two former ratified it, but the United States did not, though it was tacitly accepted, and the United States participated in the municipal government as though it were actually a party to the treaty.<sup>255</sup>

Though the German government voluntarily gave positive assurances that it had "no desire or intention to interfere with the autonomy of the group," there came to be "a general impression of the existence of ulterior plans of control on the part of Germany."<sup>256</sup> While the United States did not at first share this

<sup>255</sup> Bayard to Greenebaum, June 19, 1885, Serial 2560, 50 Cong. 1 Sess., H. Ex. Doc. 238, 9-11; Bayard to Bates, July 22, 1886, *ibid.*, 29-33.

<sup>256</sup> Bayard to Greenebaum, *loc. cit.*

suspicion, evidence continued to accumulate that such was the case,<sup>257</sup> and on the last day of 1885 the American consul telegraphed the Department of State that the king had been driven from the seat of government and the Samoan flag hauled down by forces from a German warship.<sup>258</sup> When, in the middle of January, George H. Pendleton, American minister in Berlin, sought an explanation from Bismarck, the chancellor assured him that though a despatch had been received from the commander of the vessel involved in the proceeding, dated on the very day of the despatch reporting the matter to the American government, "no mention was made in it of any such occurrences, or of any cause for, or probability of, its happening." In any case, Bismarck gave explicit assurance of the intention of Germany to "maintain the status as it has heretofore existed," with which this country was so thoroughly satisfied that it had "neither interest nor desire to change it." He promised to right any wrong which had been done and to make reparation.<sup>259</sup>

Meanwhile events in Samoa did not wait upon the home governments. The policy of the German consul had been to take possession of part of Samoan territory as security for claims. It was this policy which produced the crisis.<sup>260</sup> The king made an appeal to

<sup>257</sup> Serial 2560, Doc. 238, 11-14.

<sup>258</sup> Bayard to Pendleton, Jan. 12, 1886, Serial 2560, Doc. 238, 15.

<sup>259</sup> Pendleton to Bayard, Jan. 16, 1886, Serial 2560, Doc. 238, 15-16.

<sup>260</sup> Serial 2560, Doc. 238, 18-19.

Greenebaum, in May, 1886, in the name of the treaty of 1878, asking that his "flag be hoisted under the protection of the United States, until existing difficulties are settled."<sup>261</sup> Thereupon Greenebaum, wholly without authority, proclaimed an American protectorate.<sup>262</sup> This action was a distinct embarrassment. It made it difficult for Germany to withdraw gracefully, despite the prompt disavowal of Greenebaum's act by the United States, and it made it appear that the American consul was not unwilling to see the *status quo* disturbed in favor of the United States. Further, it began to be very clear that unless matters were taken out of the hands of the men on the spot, events were likely to move more rapidly than was desirable.

Bayard proposed, therefore, to have all three countries appoint new consuls in order to have men on the ground who were without connection with past events and who could view the situation impartially.<sup>263</sup> Bayard's plan also involved a conference at Washington where matters could be set right. Both Germany and Great Britain accepted the proposal for a conference, but Germany modified Bayard's plan to the extent of suggesting that each of the three interested nations send a commissioner to Samoa to gather information

<sup>261</sup> Serial 2560, Doc. 238, 25.

<sup>262</sup> Commander B. F. Day to Secretary of the Navy, May 28, 1886, and enclosures, Serial 2560, Doc. 238, 24-28.

<sup>263</sup> Bayard to Pendleton, June 1, 1886, Serial 2560, Doc. 238, 19-20.

and make a report which should serve as a basis for the conference discussions.<sup>264</sup> The proposal to send a commissioner was accepted by Bayard the day after its receipt,<sup>265</sup> and two weeks later the former law partner of the Secretary of State, George H. Bates, was instructed to proceed to Apia as a special agent, charged with the task of investigation, of disavowing Greenebaum, and of looking into certain charges against him.<sup>266</sup>

In the same year a great deal of agitation occurred over what appeared to be another case where a special agent was sent because the minister was not fully in the confidence of the Department of State. The incident which caused the mission was the arrest and imprisonment of A. K. Cutting, an American citizen, in Mexico. It is not necessary to go into the facts at length. The legal phases were very complicated; the matter of jurisdiction was much at issue; the scene of the difficulty was a long distance from Mexico City. These factors were sufficient to make it appear desirable that a lawyer, experienced in Spanish-American legal questions, and possessing a thorough knowledge of the Spanish language, should be sent to make an investigation. The man selected was Arthur G. Sedgwick. The minister at the moment was Henry R. Jackson, who was also a lawyer of experience and

<sup>264</sup> C. Coleman, chargé *ad interim*, to Bayard, June 18, 1886, Serial 2560, Doc. 238, 22-23.

<sup>265</sup> Bayard to Phelps, July 7, 1886, Serial 2560, Doc. 238, 29.

<sup>266</sup> Bates's report, Dec. 10, 1886, For. Rel., 1889, 237-278.

ability. This fact taken in connection with a somewhat bombastic statement which Sedgwick made before leaving, reports of misbehavior on his part at a social function, rumors of friction between him and the minister, and the retirement of Jackson shortly after, gave rise to a belief that his appointment was a reflection upon the regular minister. This point of view is given credence in John W. Foster's "Practice of American Diplomacy,"<sup>267</sup> but without producing any evidence in support of it.

As a matter of fact, Sedgwick's instructions do not furnish any basis for such a contention. He was sent solely as an investigator without any diplomatic capacity whatever. He was not authorized to do anything save make a report, any discussions or negotiations being left wholly in the hands of Jackson. Indeed, Secretary of State Bayard, in a public statement, made it clear that Sedgwick was sent as an assistant to Jackson, with no independent power. Finally, it appears that Jackson had already resigned his post some time before the Cutting case came up. Foster's assertion is worth something, because he had access to documents not available to the public, but the only evidence given in support of his statement came from the fact that when the correspondence leading to the resignation of Jackson was called for, it was withheld on grounds of public policy. That is not very clear evidence, being, at best, an argument from silence—and an effort to interpret that silence



in a very special way. When it is recalled that the correspondence took place before Sedgwick was appointed, the argument is overthrown. It appears reasonably clear that Foster was mistaken.<sup>268</sup>

By all means the most notable case of this character occurred in Cleveland's second administration, when James H. Blount was sent to Hawaii. The circumstances are familiar. In January, 1893, the royal government of Hawaii was overthrown by a revolution, and a provisional government set up with Sanford B. Dole as its leader. The new government promptly entered into negotiations with Washington, and on February 14, 1893, a treaty of annexation was signed. When, March 4, Cleveland became President, the treaty was before the Senate. He withdrew it almost immediately for "reëxamination."<sup>269</sup> The reasons were not far to seek. While President Harrison had declared unequivocally that "the overthrow of the monarchy was not in any way promoted by this Government,"<sup>270</sup> and John W. Foster, his Secretary of State, had asserted that "the change of government in the Hawaiian Islands . . . was entirely unexpected so far as this Government was concerned," and "the change was in fact abrupt and unlooked for by the

<sup>268</sup> *New York Times*, Aug. 15, 20, 22, 23, 29, 31, Sept. 1, 7, Oct. 10, 1886; *Nation*, XL, 206, 226; *Springfield Republican*, Aug. 14, 16, 18, 20, 30, 31, Sept. 1, 10, 21, 1886; *Appleton, Cyclopaedia of American Biography*, III, 338; Serial 2448, 49 Cong. 2 Sess., Sen. Doc. 109, 2-3.

<sup>269</sup> March 9, 1893, Richardson, *Messages and Papers*, IX, 393.

<sup>270</sup> Feb. 15, 1893, Richardson, *Messages and Papers*, IX, 348.



United States minister or naval commander,"<sup>271</sup> President Cleveland did not take those statements at their face value. The deposed queen had sent a protest which led him to suspect the complicity of the United States minister, John L. Stevens.

Under these circumstances, and desiring "an accurate, full, and impartial investigation . . . of the facts," he could not confide the task to the minister.<sup>272</sup> Instead of withdrawing him and sending a new official representative, James H. Blount was sent in the character of an executive agent, but with "authority in all matters touching the relations of this Government to the existing or other government of the islands, and the protection of our citizens therein," which was described with a word that became attached to Blount thereafter,—“paramount.”<sup>273</sup> This is the classic instance of the use of an executive agent in circumstances where the administration had lost confidence in the regular official representative.<sup>274</sup>

The only case later than that of Blount which falls definitely into this classification is that of John Lind, already dealt with as an emissary to an unrecognized government. One of the elements entering into the decision to send him was the situation in the American

<sup>271</sup> Serial 3062, Sen. Ex. Doc. 76, 3.

<sup>272</sup> *Ibid.*, 462.

<sup>273</sup> March 11, 1893, For. Rel., 1894, App. II, 467-468; see *ibid.*, 469.

<sup>274</sup> Stevens promptly resigned. *Ibid.*, 413, 420-421.

embassy at Mexico City. Almost at once after President Wilson took office it became clear that there was a sharp divergence between his policy and the course pursued by the ambassador, Mr. Henry Lane Wilson. He was wholly out of the question as a representative of the new administration in dealing with Huerta. But he was not dismissed at once. Instead he was summoned to Washington, and the same statement which carried the news that Mr. Lind was going to Mexico contained the announcement that Ambassador Wilson's resignation had been accepted to take effect October 14.<sup>275</sup> From August to October, therefore, Mr. Wilson remained in office, though absent on leave from his post, while, as in the case of Blount, all matters touching the relation of the United States government to the existing government in Mexico were consigned to Mr. Lind.

#### VI. *Agents Sent to Make Investigations*

The last group, the largest, and yet the one that requires the least notice, is made up of agents sent to collect information. The material which they have sought has varied from detailed facts without any political significance to political information designed to furnish the background for important national policies. One large subdivision of this group is composed of agents whose task has been to furnish material for shaping policy with regard to recognition. It is comprised of agents sent to states not yet recognized

<sup>275</sup> Aug. 4, 1913, For. Rel., 1913, 817-818; above, 488-491.

or to unrecognized governments to make reports upon conditions. Upon their reports the further action of the government has usually been predicated. These missions, therefore, belong in two categories, and having been described already under one, the material need not be repeated.

Another subdivision of considerable size is composed of men sent to recognized states, or to viceregal governments, to gather data upon which future action might be based. Their tasks have been diverse, ranging from the secret agent sent to spy upon the activities of a congress in Europe, which was expected to meet in 1823,<sup>276</sup> to men fully accredited to discover the views of the governments of Europe on the matter of the coinage of silver.<sup>277</sup> Practically without exception there has been some feature in the mission of each of these men more distinctive than the mere fact

<sup>276</sup> Adams to McRae, MS. Inst. Sp. Miss., I, 25-26; see above, 572-574.

<sup>277</sup> Congress having made an appropriation for the purpose of "negotiation with foreign Governments with a view to the international remonetization of silver," George Walker was instructed, July 19, 1879, to visit Europe in order to "communicate our views and to learn those of the European Governments." His mission was confidential, and the regular diplomatic officers were instructed to assist him. But his service did not "include any diplomatic function or any official representation of the Government in any form." He visited London, Paris, and Berlin. MS. Inst. Sp. Miss., III, 309, 314; Serial 2333, Doc. 29, 9-10, 17-21. Manton Marble had a similar mission in 1885. *Ibid.*, 2-9. Four years later S. Dana Horton and Charles H. Dalton were made special commissioners to make investigations along the same lines. MS. Inst. Sp. Miss., IV, 28, 33.

that they were to gather information, and they have, consequently, been adequately described heretofore.<sup>278</sup>

A third subdivision of this group is composed of men whose function was much more prosaic. They were sent to make specific or routine investigations. At various times American citizens have been arrested in foreign countries and special agents have been assigned the task of securing information as the basis for representations by the government of the United States. Filibustering expeditions have resulted in the need for special investigations. During the Civil War, as well as the Great War, several agents were despatched to secure information on various subjects. Other men were instructed to gather data about claims, sometimes to substantiate the demands of American citizens and sometimes to prove them fraudulent. The desire to secure information about American historical material in European archives has resulted in the despatch of several agents. At other times the investigation of the activities of regular diplomatic officers and consuls has been entrusted to special agents. All these missions run in the same channels; they have no great significance and it would be without profit to review them case by case.<sup>279</sup>

The last subdivision is made up of agents sent to gather statistical data. Most of those whose missions

<sup>278</sup> For those not mentioned previously, see note C at end of chapter.

<sup>279</sup> For a brief account of some of these agents, see note D at end of chapter.

are important for this study have been described in other connections. Among them are the "tobacco agents," Nathaniel Niles, Joshua Dodge, and I. George Harris, who were seeking data in Europe on the basis of which the United States could build a policy that might lead to a better market for one of the important staples of the mid-nineteenth century.<sup>280</sup> Another agent of this group was Israel D. Andrews, who gathered a huge mass of material as a basis for the negotiation of the treaty providing for reciprocity with Canada.<sup>281</sup>

Still another was A. Dudley Mann. The United States was practically without an immigration policy, and repeated calls upon the Department of State from Congress only served to show that data upon which to found a policy were lacking. In anticipation of further calls of the same character Buchanan instructed Mann to visit Liverpool, Hull, Dublin, Cork, Belfast, Glasgow, Havre, Antwerp, Rotterdam, and

<sup>280</sup> Niles was in Austria in 1837 and 1838. See above, 634-635. Dodge served in Germany in 1837 and again in 1840 under the direction of Minister Wheaton, and in Austria in 1842 under the direction of Minister Jenifer, without "diplomatic or public character." Instructions, June 6, 7, 1837, May 14, 1839, Sept. 21, 1840, July 6, 1841, MS. Inst. Prussia, XIV; May 9, 1842, March 8, 1843, MS. Inst. Austria, I; for Dodge's reports, see despatches from Wheaton, MS. Desp. Prussia, I, II; from Jenifer, MS. Desp. Austria, I; see also Hasse, Index, I, 509. In 1843 he was succeeded by Harris, who had similar instructions. Instructions, March 8, 9, May 10, 1843, MS. Inst. Austria, I; despatches, March 31, 1843—Feb. 18, 1844, MS. Desp. Austria, I.

<sup>281</sup> See above, 745-747.

Amsterdam, "and to report . . . the rules and regulations observed concerning emigrants at each of those ports, as well as at the ports of Germany, together with all other facts and observations which you may deem important to be known by the Representatives of the people."<sup>282</sup> Mann did not confine himself to the somewhat formidable list of places furnished him, but in a rapid investigation sent home an astonishing amount of instructive material together with a series of nine suggestions for remedial measures.<sup>283</sup> Aside from the Mann mission, and others that have been mentioned as gathering data upon which domestic policies could be framed, the agents in this group are a singularly uninteresting lot, and it would be unfruitful to catalogue their activities, for they shed no new light upon the problem in hand.

The use of executive agents is coterminous with the history of the United States under the Constitution. Before the government was fully organized, Washington resorted to this expedient, and at the moment of writing there are still executive agents to whom are committed specific tasks in connection with our foreign relations. During one hundred and thirty-

<sup>282</sup> Buchanan to Mann, June 26, 1847, MS. Inst. Dip. Agents, etc., Germany, etc., I bis, 1-9.

<sup>283</sup> Mann to Buchanan, Aug. 2, 3, 30, Sept. 13, MS. Desp. Mann.

nine years there have been several hundred such agents, distributed fairly evenly in time, though the numbers rise and fall in accordance with the nature of the problems to be faced, and the personalities of Presidents and Secretaries of State.

Agents have gone to practically every country with which the United States has had any relations at all, to some stillborn countries, and to some viceregal provinces. Their tasks have varied in scope and importance from mere search for detailed facts of incidental importance to matters of the gravest political and diplomatic concern. They have gone secretly; they have gone without "definite character"; and at other times they have gone not only publicly, but with much publicity and every mark of representing the nation, and have borne the title of ambassador, the highest title that a diplomat may have.

The practice has grown steadily since the beginning, but each change has been, or has been made to appear, a logical development of previous precedents until it is now impossible to draw a line and say that one set of agents is within the limitations of the Constitution and that another group represents executive trespass. The institution stands as a unit, each of its component parts apparently buttressed safely by precedent, and generally accepted as sound. The whole forms an interesting illustration of the adaptability of American constitutional practice to meet the changing situations of a growing nation.



## NOTES TO CHAPTER XI

## NOTE A. CEREMONIAL AGENTS

The United States has been represented in numerous ceremonial occasions similar to those described above. In 1904 John B. Jackson, minister to Rumania, Serbia, and Greece, represented the United States at the coronation of King Peter, at Belgrade. (For. Rel., 1904, 802-803; Register of the Department of State, 1916, 103.) There were three ceremonial missions in 1906. For the second time America sent a special embassy to Spain. This one attended the marriage ceremonies of Alfonso XIII, and was composed of Frederick W. Whitridge, accompanied by a naval and a military attaché. (For. Rel., 1906, 1344-1347.) Minister Thomas J. O'Brien was instructed to represent the President at the King of Denmark's funeral. (Ibid., 526.) At the coronation of the King of Norway, however, Charles H. Graves, minister to Sweden and Norway, was made special ambassador. (Ibid., 1189-1191.) The following year Minister Graves represented the President at the funeral of the King of Sweden. (Ibid., 1907, 1020.) When the King and Crown Prince of Portugal were assassinated, in 1908, Minister Charles P. Bryan was made special ambassador to represent the President at the funeral. (Ibid., 1908, 686-690.) Similarly, the following year, Minister William W. Rockhill attended the funeral of the Emperor of China as special ambassador. (Ibid., 1909, 215-218.) The same year Henry L. Wilson, minister to Belgium, was present at the enthronement ceremonies of Albert I, as the personal representative of the President, although there is no record of special instructions regarding the funeral of Leopold II. (Ibid., 36-37.)

There was no regular minister in Siam when the king died, in 1910, so Chargé George C. Tarler was special representative of the President at the coronation of the new king. (Ibid., 1910, 845.) The following year Minister Hamilton King attended the cremation and formal coronation ceremonies as representative of the President or special ambassador. On the latter occasion King was assisted by Colonel Lea Febiger. (Ibid., 1911, 708-711.) John Hays Hammond was made special ambassador to attend the coronation of George V and was accompanied by representa-

tives of the War and Navy Departments. (Ibid., 251-255.) Richard Bartholdt and C. P. Wolfram were appointed to represent the President in presenting a statue of General von Steuben to the German emperor and people in recognition of the gift of a statue of Frederick the Great. (Ibid., 243-245.) Venezuela celebrated its centenary of independence in 1911, and as in the case of the three centennials of the previous year, the United States was represented by a special embassy composed of Thomas C. Dawson accompanied by a naval and a military attaché. (Ibid., 753-755.) In the absence of the minister to Denmark, Chargé Norval Richardson was made special envoy for the funeral ceremonies of Frederick VIII, in 1912. (Ibid., 1912, 333-334.) During the same year Minister Jackson, as special ambassador, attended the celebration of the coming of age of the Crown Prince of Bulgaria. (Register of the Department of State, 1916, 103.) In 1913 Jacob G. Schurman, minister to Greece, was accredited special and personal representative of the President for the funeral of George I. (For. Rel., 1913, 554.) The following year Minister Charles W. Russell, as special ambassador, attended the coronation of the Shah of Persia. (Ibid., 1914, 1059.) The same rank was assigned to Ambassador Frederic C. Penfield for the funeral of Emperor Francis Joseph, in 1916. (Ibid., 1916, 30-32.)

Presidential inaugurations have been the most frequent ceremonial occasions for which special agencies have been created since 1913. The regular minister to Bolivia, John D. O'Rear, was made special ambassador for the inauguration of President Guerra, in 1917. At this time it was not a general custom to appoint special representatives to presidential inaugurations, but it was done in this case because of the action of Bolivia in the Great War. It was stated that this was not to be drawn into a precedent. However, in 1918, Admiral Caperton was commissioned to represent the United States at the Brazilian inauguration. Dr. Rodrigues Alves was too ill to take the oath of office and died early in the following year. The inauguration of his successor, in July, 1919, was attended by Frederic J. Stimson, ambassador to the Argentine, as special representative. During the same year Robert E. Jeffery, minister to Uruguay, was made special representative with the rank of ambassador for the

inauguration of President Brum. Admiral Caperton was present, also. Jeffery was sent with the rank of minister to the inauguration of the president of Paraguay the next year. Ambassador John W. Riddle was made special ambassador for the inauguration of the president of the Argentine Republic, in 1922. The following year the minister to Uruguay, Hoffman Philip, attended the inauguration of President Serrato, as special ambassador. (*Who's Who in America*, XIV, 1528.) In 1923 Dr. W. E. D. Du Bois, who was in Liberia, was commissioned special representative with the rank of minister for the inauguration of President King. (*Time*, Feb. 18, 1924, 12.)

When Peru celebrated its centenary of independence in 1921, Congress created a commission of six, who were appointed by the President. Alfred Douglas, as head of the mission, had ambassadorial rank. (Serial 7932, 67 Cong. 1 Sess., Sen. Doc. 3; *Stat. at Large*, XLII, 67; *New York Times*, April 15, June 29, 30, July 6, 24, 31, Aug. 3, 4, 6, 1921.) Three years later General John J. Pershing had the same rank when he headed a commission to the centennial celebration of the battle of Ayacucho, in Peru. Two members had the rank of minister. (*Ibid.*, Nov. 18, 23, Dec. 7, 11, 1924.) In 1922 Minister H. Percival Dodge attended the wedding of the King of the Serbs, Croats, and Slovenes, as special ambassador. Similar rank was assigned to Peter A. Jay, minister to Rumania, for the coronation of the king and queen, in 1922, and to Minister William S. Culbertson for the funeral of Ferdinand I, in 1927. (*Ibid.*, July 23, 1927. See manuscript material in Department of State.)

#### NOTE B. AGENTS DURING THE GREAT WAR

In 1914 Percival Dodge was made a special agent of the Department of State to assist the American ambassador at Paris, where he was placed in charge of Austro-Hungarian and German interests in France. He became a special agent to Serbia in June, 1917. (*Register of the Department of State*, 1922, 111; *Who's Who in America*, XI, 784.) William H. Buckler was appointed special assistant in the American embassy at London in December, 1914, and served until 1919, when he was attached to the Paris peace commission. (*Ibid.*, 406; *Register of the Department of State*, 1918, 91.) Early in 1915 John B. Jackson

was sent as a special agent to assist the ambassador in Berlin. He had charge of the British section until 1917. He also reported on German prisoners of war in England, and visited the camps of British, Serbian, and Rumanian prisoners. (*Who's Who in America*, XI, 1480; *Register of the Department of State*, 1916, 103.) Ellis L. Dresel became a special representative of the Department of State in the embassy at Berlin in 1915. He remained until 1917, when he was transferred to the legation in Switzerland. The following year he was assistant commissioner to the American-German and Austro-Hungarian prisoner conferences. In 1919 he was attached to the embassy in Paris to handle the work concerning the interpretation and execution of the treaty with Germany pending ratification by the United States. (MS. Appointment Bureau.)

In 1915 Lewis Einstein was appointed special envoy to Turkey to assist Ambassador Morgenthau. In October of that year he was transferred to Bulgaria, where he had charge of British interests until June, 1916. (*Register of the Department of State*, 1922, 116; *Who's Who in America*, XIV, 653.) George L. Lorillard was "assigned as Special Agent with individual rank of *Chargé d'Affaires*, to assist the Minister at Bucharest in caring for American interests in Serbia and at the same time acting in representation of Austro-Hungarian interests there November 18, 1915." Again in 1917 he was made special agent to care for American interests in Serbia. (*Register of the Department of State*, 1916, 111; *ibid.*, 1922, 147.) Graham R. Taylor served as special assistant to the American ambassador to Russia from 1916 to 1919. (*Who's Who in America*, XIII, 3125.) W. F. Lands became an assistant at the same embassy in 1916. The following year Basil Miles was appointed a special assistant with rank of minister and had charge of Austrian interests in Russia. Guy Crosswell Smith was despatched on missions to Russia and Denmark the same year. William L. Hurley was in the office of the military attaché in London from September, 1917, to February, 1918, when he became an assistant in the American embassy, where he served until October, 1919. (*Register of the Department of State*, 1922, 136.) In 1918 Lewis Heck was appointed assistant at the American legation in Switzerland. (*Ibid.*, 1918, 120.)

Ray Stannard Baker spent most of the year 1918 as a special commissioner to England, France, and Italy, making reports on economic and political matters. (R. S. Baker, *Woodrow Wilson and the World Settlement*, I, 31; *New York Times*, Jan. 1, 1922.) Mr. Baker reported not only to the Department of State, but also to Colonel House. Mr. House, and the "Inquiry" organized a great corps of people in the United States, and also abroad, gathering material. Among others David Hunter Miller, law partner of Colonel House's son-in-law and diplomatic assistant, Gordon Auchincloss, was appointed a special agent in October, 1918, with instructions to report to Colonel House. (See *Who's Who*, XII, 2183.) He remained in one service or another for a long time, and occupied, at times, a prominent rôle.

The trade restrictions imposed by the British orders in council resulted in the despatch of Manton W. Wyvell to London in 1916. (*Who's Who in America*, XIV, 2095.) Two years later McNally had a mission to Switzerland concerning the post-war trade between that country and Germany. Spanish administrative measures affected trade with the United States to such an extent that Norman H. Davis was sent there in 1918. The next year he became United States finance commissioner to Europe and financial adviser to the Paris peace commission. (*Ibid.*, XIII, 913; *New York Times*, July 22, 1918.) During 1918 Archibald C. Coolidge was sent to Europe to study and report on conditions in Sweden, Russia, Austria, and Eastern Europe. (*Who's Who in America*, XII, 767.) Walter Lippmann had a special mission to Great Britain, France, and Italy in 1920. During the same year William R. Castle, Jr., was despatched to Great Britain, Germany, Serbia, Bulgaria, Czechoslovakia, Yugoslavia, and Poland. Arthur W. Dubois and H. J. Tick were special representatives of the State Department on the Czechoslovakia-Polish boundary commission in 1920 and 1921. (*New York Times*, Oct. 28, 1920.)

#### NOTE C. AGENTS SENT TO MAKE POLITICAL AND ECONOMIC INVESTIGATIONS

During 1816 Edward Coles carried despatches to diplomatic officers in Europe and made some investigations which were fol-

lowed by the reception of the American minister to the Russian court and the assurance that two Russian representatives to the United States would be replaced by more agreeable persons. (Despatches, Dec. 14, 23, 1816, MS. Special Agent Bundle.)

In the spring of 1835 Charles Biddle was instructed to go to Central America to make inquiries regarding the "present state of the projects for uniting the Atlantic and Pacific oceans," which would form the basis for future negotiations. Beside securing information about the practicability of the different routes, he was to procure the public documents connected with the subject, assisted by the United States chargés in Guatemala and New Granada. Biddle went to Panama, where he secured a private concession, but he did not complete the investigations. (Instructions, May 1, 2, 1835, July 19, Sept. 26, Dec. 5, 1836, MS. Inst. Sp. Miss., I, 126-128, 157-158, 163; despatches, Nov. 8, 13, Dec. 7, 16, 29, 1835, Jan. 18, March 15, 24, Sept. 25, Dec. 14, MS. Special Agent Bundle; Serial 546, 30 Cong. 2 Sess., H. Rpt. 145, 241-330, *passim*; Serial 328, 25 Cong. 2 Sess., H. Doc. 228, 31-33, 38, 98, 103.)

Another special agency during the same years grew out of the situation in Oregon. The Oregon country was held under joint occupation by the United States and Great Britain, but British influence grew rather more rapidly than American. Enthusiasts for American settlement resented this, and various individuals published pamphlets and agitated otherwise the notion that the exclusiveness of the Hudson Bay Company was working severe hardship upon American settlers. In order to determine the truth of the charges, William A. Slacum was sent as a special agent to visit the settlements in Oregon and make a thorough investigation of all phases of the situation. (Appointment, Nov. 11, 1835, MS. Domestic Letters, XXVIII; reports, March 5, June 7, July 7, 30, Oct. 10, 1836, MS. Special Agent Bundle; Serial, 314, 25 Cong. 2 Sess., Sen. Doc. 24; Serial 351, 25 Cong. 3 Sess., H. Rpt., 101, 29-46.)

In 1852 William Miles was twice instructed to proceed to Peru in order to make investigations concerning the Lobos Islands questions. (Instructions, Aug. 30, Nov. 18, 19, 1852, MS. Inst. Peru, XV; despatches, Sept. 17—Dec. 13, 1852, MS. Secret Service Vol., I, 527-615, *passim*; see also Oct. 11, 19,



Dec. 21, 1852, MS. Desp. Peru, IX.) Two years later Joseph W. Fabens was despatched to investigate conditions in Nicaragua, where the minister from the United States had been insulted, and to examine the claims arising from the shelling of Greytown by an American vessel. (Instructions, MS. Inst. Sp. Miss., III, 121-124, 66-67; MS. Inst. U. S. Mins. Am. States, XV, 231; despatches, MS. Secret Service Vol., I, 620-629.)

A. B. Steinberger was instructed, March 29, 1873, to proceed to the Samoan Islands for the "sole purpose of obtaining full and accurate information." The following year he was directed to observe and report on Samoan affairs and to impress "those in authority there with the lively interest we take in their happiness and welfare." (Serial 1691, Doc. 161, 5-6, 13-53, 75-76, 79, 81, 124-125; Serial 1755, 44 Cong. 2 Sess., H. Ex. Doc. 44, 28, 69, 103, 154, 155; Serial 1581, 43 Cong. 1 Sess., Sen. Ex. Doc. 45.)

A commission consisting of Roland P. Falkner, George Sale, Emmitt J. Scott, and several attachés was appointed in 1909 to "examine the situation and to confer with the officers of the Liberian government and with the representatives of the other governments actually present in Monrovia, with a view of reporting recommendations as to the specific action on the part of the government of the United States which may afford the most effective measures of relief." As a result of the report it was determined to lend assistance in the financial, military, and agricultural departments. (For. Rel., 1910, 694-709; *ibid.*, 1911, 337; R. P. Falkner, "United States and Liberia," *Am. Jour. Int. Law*, IV, 528-545.)

In 1918 Charles Ferguson was despatched to Siam to investigate concerning economic and industrial conditions. He also went to Tokio. The following year Charles M. Johnston was entrusted with special investigations in Mexico. The same year Frank P. Lockhart made a survey of economic and political conditions in the Far East. (Register of the Department of State, 1922.) A year later Rear Admiral Harry S. Knapp was sent to investigate conditions in Haiti, particularly as affected by the presence of United States marines. (*New York Times*, Nov. 11, 12, 1920.)



## 832 EXECUTIVE AGENTS IN FOREIGN RELATIONS

### NOTE D. AGENTS SENT TO MAKE SPECIFIC AND ROUTINE INVESTIGATIONS

Vincent Gray was instructed in 1803 to investigate the case of an American citizen who complained of unjust treatment at the hands of Cuban authorities, in order that representations might be made to the Spanish government. (MS. Desp. to Consuls, I, 158.) George W. Erving had a special mission to Europe in 1823 and 1824. (June 10, 1823, MS. Misc. Letters; April 14, 18, Sept. 25, 1823, April 15, 1824, Monroe Papers, Library of Congress; Monroe, Writings, VI, 303, 432; J. Q. Adams, Memoirs, VI, 195-196; see also D. Perkins, *Monroe Doctrine* (Cambridge, 1927), 72, 174, 240.) The dispute over the northeastern boundary led to the despatch of S. B. Barrell to "inquire into the origin of settlements . . . , the causes of recent disturbances . . . , and especially into the grounds of the arrest, deportation, and detention" of an American citizen. Barrell reported to Clay February 11, 1828. (Serial 186, 20 Cong. 2 Sess., H. Doc. 90, 38-41; Serial 166, 20 Cong. 1 Sess., Sen. Doc. 130, 3-19; Serial 175, H. Doc. 278, 10, 13, 14, 18; Am. State Papers, For. Rel., VI, 626, 838, 1015.)

Several years later Albert Fitz was instructed to secretly visit certain of the British West Indies to ascertain "the strength of the Naval and Military forces . . . and the object for which they might be assembled; to examine the fortifications, . . . ascertain the number of guns, describe the disposition of the inhabitants." He reported July 21, 1842. (MS. Special Agent Bundle.) Malcolm W. Mearis having reported the fitting out of a filibustering expedition, he was directed, July 31, 1849, that "the President deems it necessary with a view to the maintenance of our neutral relations with foreign countries, and the safety of our foreign intercourse, that you should continue, until further orders, your investigation." Mearis visited Boston, New York, Philadelphia, and Baltimore, making frequent reports. (Ibid., July 31, Aug. 10, Sept. 25, Oct. 16, 17, 1849, April 22, July 29, 1851.) In August, James E. Harvey was despatched to the same places to make similar secret investigations and urge action on the part of the civil authorities. (Ibid., Aug. 13, 19, Sept. 6, 1849.) A few days later Clayton instructed Leonidas McIntosh

to proceed to New Orleans on the same sort of mission. (Ibid., Aug. 27, 1849.)

During the Civil War it was necessary to entrust the investigation of various subjects to special agents. In May, 1861, W. M. Walker was directed to observe and try to prevent the fitting out of privateers in European ports, especially in Great Britain, "designed to prey upon the Commerce of the United States," and also the shipment of arms and munitions of war for the use of the "insurgents." His instructions were oral and "involved other matters of great public importance." Walker visited the British ports and Normandy before his recall in August. (Despatches, June 4, Sept. 15, 18, Oct. 20, 1861, MS. Misc. Letters; Aug. 1, 1861, MS. Inst. Gr. Britain, XVII, 471; Sept. 20, Oct. 18, 1861, MS. Desp. Gr. Britain, LXXVII.) That same month Lemuel D. Evans was appointed "to watch and report upon the interests of the United States on the borders between Texas and Mexico." (Aug. 13, 1861, MS. Special Agent Bundle.)

The following year Reverdy Johnson was sent to New Orleans as a commissioner to investigate the complaints on the part of foreign consuls against the proceedings of Major General Butler. (June 10, 27, 1862, MS. Inst. Sp. Miss., III, 139, 140; June 25, July 17, Aug. 2, 1862, MS. Domestic Letters, LVII, LVIII; June 4, 25, July 9, 14, 15, 18, 23, 24, 25, Aug. 19, 1862, MS. Misc. Letters.) The desire to restore foreign commerce led to the appointment during the same month of a special agent, Cuthbert Bullitt, to secure information concerning the cotton situation at New Orleans. (June 23, July 10, 1862, MS. Special Agent Bundle.) Two years later, at the suggestion of Major General Banks, B. W. Saunders was sent confidentially to observe the Confederate agents in Europe. (Dec. 26, 1863, MS. Special Agent Bundle; MS. Inst. Sp. Miss., III, 282-284; despatches relative to Saunders, March 18—Dec. 15, 1864, MS. Desp. France, LIV, LV, LVI.)

Thomas Biddle was appointed, August 3, 1866, special agent to investigate rumors that American negroes were being kidnapped and reduced to slavery in Cuba. (MS. Inst. Sp. Miss., III, 272-274, 346.) The following year George H. Sharpe was sent to Europe in an attempt to identify any American citizens

who might have had a part in the assassination of President Lincoln and to secure information about John H. Suratt who was to be tried. (Ibid., 158, 192-193; Feb. 15, 1867, MS. Special Agent Bundle.) Rumors of a Fenian raid on Canada a year later led to the despatch of Sharpe to Vermont to make investigations. (MS. Inst. Sp. Miss., III, 197-198.) When W. H. Biddle went to Constantinople and Jerusalem in 1867, he was instructed to investigate the condition of an American colony in Syria. Reports had been received that many were suffering and that the Turkish government had protested at the settlement. (Ibid., 171-173; Jan. 28, March 2, 16, 17, April 10, May 30, June 6, Aug. 15, Sept. 12, 1867, MS. Special Agent Bundle.)

In 1878 George H. Chase, in conjunction with the regular minister, was directed to investigate the case of E. O. M. Condon, who was imprisoned in England for felony. A similar mission, five years later, was that of Horatio N. Beach, who was instructed to proceed to La Paz, Mexico, in order to investigate the case of George Caleb, convicted of smuggling. (MS. Inst. to Consuls, CVII, 173, 180; May 31, June 26, July 19, Aug. 3, 10, 1883, MS. Consular Desp. Guayaquil; for report, see MS. Inst. Mexico, XX, 651.) The following year F. F. Low was entrusted with the investigation of difficulties arising from the rent of property in Japan for United States purposes by the minister and consul general. In 1891 T. C. Mendenhall and C. Hart Merriam were commissioned, as were two representatives from England, to make investigations concerning the killing of fur seals near the Pribilof Islands, for use in the arbitration of that problem. (MS. Inst. Sp. Miss., IV, 34-42.)

One of the first agents despatched in relation to the matter of claims was Samuel Bayard who went to England in 1794 to handle in detail the cases of illegal captures concerning which Jay had been making representations. He was to act under Jay's direction. (MS. Domestic Letters, VII, 381-384; MS. Inst. U. S. Mins., II, 202, 258, 348; III, 47-48, 208-211, 277-280; IV, 66-67, 141, 166, 207; other instructions to Bayard in the same volumes; letters from Bayard, July 16, 1794—May 16, 1798, MS. Special Agent Bundle; MS. Letters of Samuel Bayard; report in Division of Publications, Department of State.) Samuel Cabot was associated with Bayard in 1797. (June 29, 30, 1796,

MS. Domestic Letters; July 8, Nov. 27, 1797, Jan. 1, 10, 1798, Feb. 6, 1799, MS. Inst. U. S. Mins., IV.)

In 1849 William C. Jones was despatched to Mexico and California as a confidential agent "for the purpose of obtaining exact and reliable information as to the condition of land titles in California." (MS. Inst. Sp. Miss., I, 278-279; report, Serial 31 Cong. 2 Sess., Sen. Ex. Doc. 18.) When the United States assumed the responsibility of paying the claims provided under the treaty of peace with Mexico, many fraudulent ones were presented before the commission in Washington. Therefore, in 1850, Robert Greenhow was sent to Mexico to make investigations under the direction of the regular diplomatic officer. (MS. Inst. Sp. Miss., I, 306; despatches, May (misdated Oct.) 9, June, Aug. 12, Oct. 23, 1850, MS. Special Agent Bundle.)

During the next couple of years several agents were despatched to prove the falsity of the claims of Gardiner and Mears, who actually had awards made in their favor. George Slacum and Buckingham Smith were in Mexico during 1851 and 1852. (MS. Inst. Mexico, XVI, 289-290, 307, 325, 329, 336; Nov. 12, Dec. 28, 1851, Jan. 4, 26, 28, Feb. 16, March 13, 1852, MS. Desp. Mexico, XIV, XV; Serial 687, 32 Cong. 2 Sess., H. Rpt. 1, 4, 31, 37-38, 97-100, 108-109, 120-128.) Edward Smith was despatched in the fall of 1852. (MS. Inst. Sp. Miss., III, 1; MS. Inst. Mexico, XVI, 335-336, 355-356; Oct. 16, Nov. 20, 1852, Jan. 7, 1853, MS. Desp. Mexico, XV, XVI.) The next year Alfred Mordecai and George E. Cooper went on a similar mission. (MS. Inst. Sp. Miss., III, 27, 32; July 3, 1853, MS. Desp. Mexico, XVII; June 18, 21, 27, Aug. 2, 1853, MS. Desp. Tampico, IV.) A few months later Charles E. Bowes was despatched. (MS. Inst. Mexico, XVI, 422-423, 432-433; Oct. 12, Nov. 20, 1853, MS. Desp. Mexico, XVIII.) The next year Richard S. Spofford was made a special agent to Mexico. (MS. Inst. Mexico, XVI, 440-445.)

In 1891 George H. Scidmore was instructed to visit Fiji to examine the claims of American citizens to lands there. (For. Rel., 1895, 739-742, 747.) A special commissioner, William J. Calhoun, investigated the claims of citizens of the United States in Venezuela in 1905. (Serial 5257, Doc. 413, 161-296.)

Some of the men sent to make routine inspections of consulates

have been executive agents. Arthur B. Wood went to Europe for that purpose in 1876. (MS. Special Agent Bundle.) Four years later Gustavus Goward was sent to South America. (MS. Inst. Sp. Miss., III, 315, 320, 324, 344.) In 1883 Dr. F. O. St. Clair was verbally instructed to investigate consulates in New Brunswick and the alleged infringement of the treaty rights of American citizens. (Manuscript material in Department of State.) In 1891 Louis A. Dent made similar investigations in the West Indies, Central America, and Mexico. (MS. Inst. Sp. Miss., IV, 45-46.) The following year H. M. Bushnell was instructed to investigate the conduct of the consuls in Panama as well as the quarantine system and its effect on commerce. (Ibid., 89-90.) R. S. Chilton, Jr., was despatched to Mexico, Canada, and Western Europe in 1896. (Ibid., 165.) The next year George W. Fishback inspected the consulates in Panama, South America, and the West Indies. (Ibid., 168.)

Occasionally it has been thought advisable to assign the special investigation of a regular representative to an agent. In 1840 the consul at Havana was accused of aiding the slave trade, and Alexander H. Everett was sent to investigate the matter as well as to oversee the consulate. (Ibid., I, 175-181; report, July 21, 1840, MS. Consular Letters, XIV.) In 1883 W. Scott Lord was despatched to investigate the conduct of the consul at Naples. (MS. Inst. Sp. Miss., IV, 5-6, 382, 384.) Senator-elect James D. Phelan went to Santo Domingo in 1914 to investigate affairs there in relation to Minister Sullivan. (New York Times, Index, 1914, 1915.)

Several special agents were sent to Europe to make investigations concerning documents. In 1833 Congress made an appropriation "to enable the President of the United States to procure copies of documents relative to the history of the United States from the Public Offices of Great Britain." J. Walter Barry was appointed for the purpose and had several interviews with Lord Palmerston, who finally granted the agent permission to examine several volumes. (MS. Inst. Gr. Britain, XIV, 141, 147, 152, 155, 156, 175; despatches, Aug. 27, Sept. 27, Oct. 14, 30, Nov. 6, 1833, MS. Special Agent Bundle; Aug. 28, Sept. 28, Nov. 6, 14, Dec. 6, 1833, MS. Desp. Gr. Britain, XLI.) Five years later C. H. Howard had a similar mission in regard to documents

connected with the history of Georgia. (May 10, 1838, MS. Inst. Gr. Britain, XIV; May 10, 1838, MS. Misc. Letters; June 26, Aug. 17, 1838, MS. Desp. Gr. Britain, XLV.)

In 1874 William Hunter was instructed to investigate the condition and care of the archives in the American legations and consulates in Europe. Theodore Dwight, librarian of the Department of State, was sent abroad in 1881 to examine the papers of Benjamin Franklin and Rochambeau, and to gather books on international law and diplomacy, and collections of laws of European nations. Four years later the search for documents relating to "claims of American citizens for spoliations committed by the French" before July, 1801, was entrusted to James O. Broadhead and Somerville P. Tuck. Later the investigation was extended to the West Indies and Spain as well as France. (Manuscript material in Department of State.)





# INDEX

- Abbot, Captain Joel, mission to Japan, 659-660.
- Abbott, Grace, unofficial representative on advisory committee on traffic in women and children, League of Nations, 616.
- Acheen, mission of Roberts, 337.
- Adams, Charles Francis, agent to negotiate with Liberian consul general in London, 462n; minister to Great Britain, 567-568, 750-751, 776, 778, 780.
- Adams, Commander Henry A., mission to Japan, 660.
- Adams, John, member of Continental Congress, 14, 17; despatched agents, 25, 250; received letter from Sherman, 40n; voted for removal by President, 91, 95; returned letters from France to President, 103; nominated commissioners to Senate, 184-185; minister to Great Britain, 370.
- Adams, John Quincy, prepared "Journal" of constitutional convention, 29, 30; opinion concerning agents, 167, 178n, 188; served in Europe as diplomat, 185, 187, 627; congressional debate concerning use of agents, 206, 218, 224, 227-230, 232, 236, 237, 238, 252-253, 255, 256-258, 574-575; despatched agents to South America, 318-319, 417, 421, 425-427, 549; to Turkey, 323-324, 326, 329, 331, 704-705; to Santo Domingo, 433; to Europe, 437, 573; to Cuba, 550, 699; to British West Indies, 702; opinion concerning Japan, 338; concerning doctrine of recognition, 454; concerning training of diplomats, 556.
- Adee, Alvey A., opinion concerning Reid's mission, 195n; delegate to international conference on Spitzbergen, 608.
- Agents, executive, use of by Continental Congress, 4-13, 25-26; under Articles of Confederation, 25, 104, 241; mentioned in "Federalist," 104; increased with presidential control of foreign relations, 105, 202-204; early discussion of lacking, 208, 219; definition of, 106-110, 170, 176-177; appointment of by executive, 106, 111-112, 116-118, 126-127, 146, 153, 157, 170, 179, 180, 200; during recess, 181, 185, 187, 188, 190, 191, 212-219, 229-230, 232, 237, 239, 249, 256-257, 259-260, 384-386, 391, 399, 576n, 577, 580, 621-622; constitutional position of never before courts, 107-108, 110; heads of departments as, 108n, 111, 117, 118, 187, 250-252, 259, 276, 283, 399, 401, 504, 605, 611, 765, 799; Congressmen as, 162-163, 174-176, 197, 271-273, 303-308, 311, 399, 582-583, 603, 618, 793, 797; officers of army and navy as, 164, 173-174, 271, part II passim; despatched as negotiators, 111-112, 117-118, 126-127, 140, 212, 239, 242, 249, 256-257, part II passim; as personal representatives of President, 153, 157, 194-196, 309, 760-790, 825-827; as investigators, 157, 212, 242, 263, 293, 296-297, 819-823, 829-837; as consular representatives, 168, 177-180, 247, 674n, part II passim; as assistants to diplomatic representatives, 242, 296-297,

- 790-819; to open relations, 315-367; during severed relations, 368-405; to unrecognized states, 406-470; to unrecognized governments, 471-525; to dependent states, 526-571; to states without diplomatic representatives, 619-691; for secrecy, 693-744; for technical purposes, 744-760; commissioned by letter, 157, 166, 169, 198, 214, 226; by special passport, 166, 169; by certificate of appointment, 166, 214; by great seal, 166, 167, 169, 244-246, 249, 250. See congressional opinion; office, question of; rank and title.
- Alaska, mission of Jordan, 759n; of Mendenhall, Merriam, 834.
- Albania, mission of Blake, 469-470.
- Algiers, mission of Jones, 383-385; of Barclay, 385-386; of Humphreys, 386-388; of Donaldson, 388-389; of Barlow, 388-389; of Decatur, Bainbridge, Shaler, 390-391; of Shaler, Chauncey, 625-626; of Newman, 790n; of Maley, 790n.
- Allen, Major General Henry T., observer on Rhineland high commission, 597; representative at Brussels and Paris financial conferences, 615.
- Allison, Senator William B., delegate to international monetary conference, 582-583.
- Alphonso XIII of Spain, 195, 763-764, 825.
- Ames, Edward W., missions to Guatemala, Honduras, Nicaragua, 801n.
- Ames, Fisher, opinion in Massachusetts ratifying convention, 78.
- Ames, Fisher W., commercial agent in Dominican Republic, 684n.
- Anderson, Chandler P., delegate to fur seal conference, 605.
- Anderson, Frank, delegate to international sanitary conference, 605-606.
- Anderson, James, commercial agent in Cuba, 532n.
- Anderson, Richard C., delegate to Panama congress, 188, 226, 228.
- Andrews, E. Benjamin, delegate to international monetary conference, 582-583.
- Andrews, Israel de Wolf, missions to Canada, 745-747, 822.
- Angell, James B., commissioner to negotiate fisheries treaty, 166n, 207, 283, 292, 603; member of special commission to China, 189; minister to China, 743.
- Appleton, John J., mission to Naples, 631-633.
- Appointing power, executive control of results from duty to manage foreign relations, 123-124, 126-127, 155, 161, 173, 179; Congress attempted to check President's use of by act of 1913, 129-130, 134-135, 138-152, 591, 607-611; by reservation when treaties with Germany, Austria, and Hungary were ratified, 152-157, 594; Senate delayed confirming appointments, 182-183, 187, 188. See Congress; congressional opinion; constitutional convention; diplomatic business; "Federalist"; ratifying conventions.
- Appropriations, Congress may check President through control of, 121, 122, 127-128, 131, 137, 139-140, 151-152, 156.
- Argentine Republic, mission of Poinsett, 406-409; of Devereux, 414-415; of Worthington, 415; of Halsey, 415n; of Perry, 421-422; of Morris, 422; of Forbes, 422; of Wood, 766; of Watterson, 791n; of Walker, 795-796; of Riddle, 827.
- Armenia, mission of Harbord, 379, 466.
- Armstrong, Andrew, commercial agent in Santo Domingo, 433.

- Armstrong, John, nominated to Senate as special commissioner, 186.
- Arthur, Chester A., asked general appropriation for international conferences, 137, 585, 586n, 591, 613; nominated commissioners to Senate, 190, 279; ignored resolution regarding use of agents, 278-279, 588.
- Articles of Confederation, conduct of foreign affairs under, 18-26, 59-61, 72, 93-94; referred to in constitutional and ratifying conventions, 28-32, 37-38, 46, 49-50, 72, 80.
- Ashmun, George, mission to Canada, 566-568.
- Aspinwall, William H., agent of Navy Department, 124.
- Atocha, Colonel Alexander J., friend of Santa Anna, 394.
- Attorneys General and courts, opinions concerning powers of President and Senate, 107; negotiators, 117; appointing power, 123-128; diplomatic service, 131-132, 159n, 160-162, 219; executive control of appointment of commissioners under treaties, 155; question of office, 160-162, 164n, 165-166, 170-172, 173, 176, 177, 201, 202n; appointing power during recess, 188; importance of constitutional usage, 203-204, 249; agents to Spanish viceregal governments, 526.
- Auchincloss, Gordon, assistant to House, 829.
- Aulick, Commodore John H., mission to Japan, 353, 355-357, 359.
- Austin, Jonathan Loring, agent of Committee of Secret Correspondence, 10.
- Austria, treaty at close of Great War, 152, 155-157, 213-214, 594; mission of Niles, 342, 633-635, 822; of Coolidge, 402, 829; of Du Bois, 402n; of Frazier, 405; of Halstead, 405n; of Dodge, 822; of Harris, 822; of Penfield, 826.
- Babcock, Brigadier General Orville E., mission to Dominican Republic, 164-165, 174, 267-269, 679-683, 737.
- Bacon, Robert, mission to Cuba, 799.
- Bacon, Senator Augustus O., opinion concerning executive agents, 238, 309.
- Bagot, Charles, British minister to U. S., 546-547.
- Bailly-Blanchard, Arthur, minister to Haiti, 509-512, 803-804.
- Bainbridge, Commodore William, mission to Turkey, 319-322; to Algiers, 390-391.
- Baker, Anthony St. John, British chargé to U. S., 542, 546.
- Baker, Ray Stannard, missions to Great Britain, France, Italy, 829.
- Baldwin, Abraham, member of constitutional convention, 51; of first Congress, 90.
- Baldwin, Rear Admiral Charles H., mission to Russia, 761.
- Balestier, Joseph, mission to Far East, 344-346, 367, 656-657, 658.
- Bancroft, Edward, agent of Committee of Secret Correspondence, 7-10.
- Bancroft, Frederic, opinion concerning Schofield's mission, 780, 783-785; concerning Doolittle's mission, 794n.
- Banks, General Nathaniel P., 676-678, 833.
- Barbary powers, negotiations with, 25, 111-112, 181-182, 213, 217, 383-391, 620-626.
- Barclay, Thomas, mission to Morocco, 25, 104n, 180-182, 217, 620-622; to Algiers, 385-386, 622.
- Barlow, Joel, mission to Tripoli, 25, 250, 389, 624; to Algiers, 388-389; to Tunis, 389, 624-625.
- Barnes, Maynard B., mission to Turkey, 382n.

- Barnes, William, delegate to international statistical congress, 578.
- Barrell, S. B., mission to Canada, 832.
- Barry, J. Walter, mission to Great Britain, 836.
- Bartholdt, Richard, mission to Germany, 826.
- Baruch, Bernard M., member of Paris peace commission, 403.
- Bates, Brigadier General John C., mission to Sulu, 690.
- Bates, George H., mission to Tonga, 364-365; to Hawaii, 762; to Samoa, 811-815.
- Baxley, H. Willis, mission to South America, 749-750.
- Bayard, James A., peace commissioner at Ghent, 187.
- Bayard, Samuel, mission to Great Britain, 168, 183-184, 834.
- Bayard, Thomas F., negotiated fisheries treaty, 166n, 279-280, 283, 603; opinion concerning ambassadors, 193n; concerning commission to Dominican Republic, 273-274; concerning mission to international exposition, 612; despatched agents, 364-365, 814-815, 816.
- Beach, Horatio N., mission to Mexico, 834.
- Beach, Moses Y., mission to Mexico, 392-394, 396, 720.
- Beaupré, Arthur M., mission to Cuba, 767.
- Beckwith, H. M., represented U. S. at Paris exposition, 578-579.
- Belgium, mission of Wilson, 825.
- Belt, John W., mission to Mexico, 495-496.
- Benton, Thomas Hart, opinion concerning Panama congress, 225-227; concerning Polk, 394, 714; concerning D. Green's mission, 709, 811; relation to agent, 482-483.
- Berthemy, M., French minister to U. S., 579-580.
- Bibb, Senator George M., opinion concerning diplomatic office, 215-216, 217, 218-219; presented motion relating to negotiating of treaty with Turkey, 254.
- Biddle, Charles, mission to Central America, 830.
- Biddle, Commodore James, mission to Turkey, 332-333, 706; to Japan, 352; to Oregon, 419, 545-548; to Cuba, 551-552.
- Biddle, Thomas, mission to Cuba, 833.
- Biddle, W. H., mission to Syria, 834.
- Bigelow, John, minister to France, 783-784, 788, 789.
- Bingham, John A., observer at international conference on revision of treaties with Japan, 592-593.
- Bingham, William, agent of Committee of Secret Correspondence, 10.
- Blaine, James G., despatched agent, 275, 278, 364; showed interest in Pan-American conference, 575, 795.
- Blake, Maxwell, mission to Albania, 469-470.
- Bland, Theodorick, commissioner to South America, 220-222, 270, 416-419.
- Bliss, General Tasker H., mission to Cuba, 174, 754n; member of Paris peace commission, 174, 401.
- Blount, James H., mission to Hawaii, 157-158, 207, 292-303, 817-818, 819.
- Blue, Rupert, unofficial representative on advisory committee on traffic in opium, League of Nations, 618.
- Bolivar, Simon, 424, 425, 427, 762, 766.
- Bolivia, mission of MacKie, 750n; of O'Rear, 826.
- Bonvouloir, Achard, French agent to U. S., 13.

- Borah, Senator William E., resolution regarding naval armament conference, 143-144.
- Borland, Solon, minister to Central America, 481.
- Borneo, mission of Balestier, 345-346; of McCluney, 658-659.
- Boudinot, Elias, member of first Congress, 87.
- Bowdoin, James, nominated to Senate as special commissioner, 186.
- Bowes, Charles E., mission to Mexico, 835.
- Bowlin, James B., mission to Paraguay, 668-670; minister to Colombia, 748n, 749, 751.
- Boyden, Roland W., observer on reparation commission, 595-596; at Brussels financial conference, League of Nations, 600; at Paris reparation conference, 615; representative at Brussels and Paris financial conferences, 615.
- Brackenridge, Henry M., secretary to commission to South America, 226, 416-419.
- Bradish, Luther, mission to Turkey, 166, 321-323, 328, 557.
- Bradley, Charles W., mission to Siam, 658.
- Branch, Senator John, presented resolution relating to Panama congress, 229-231, 238.
- Brazil, mission of Raguet, 697-698; of Walker, 795-796; of Caperton, 826; of Stimson, 826.
- Brearley, David, member of constitutional convention, 51.
- Breckinridge, Clifton R., mission to Russia, 762.
- Brent, Charles H., member of international opium commission, 607; unofficial representative on advisory committee on traffic in opium, League of Nations, 618.
- Brewer, John, mission to Venezuela, 375.
- Bristol, Rear Admiral Mark L., mission to Turkey, 380-382; ob-
- server at Lausanne conference, 381.
- British West Indies, mission of Higginson, 528-529; of Pérots, 529; of Pinckney, 542-544, 696; of Spalding, 543-544; of Magruder, 544-545; of Neale, 545; of Harrison, 700-703; of Fitz, 832.
- Broadhead, James O., missions to France, Spain, West Indies, 837.
- Brown, James, minister to France, 573.
- Brown, Senator Bedford, opinion concerning negotiating of treaty with Turkey, 243, 247, 252.
- Brown, William Linn, mission to Santa Anna, 395-396.
- Bruni, mission of Balestier, 346.
- Bryan, Charles P., mission to Portugal, 825.
- Bryan, William J., despatched agents, 498-499, 802; opinion of House concerning, 805.
- Buchanan, James, opinion regarding use of agents, 263-264; relation to Mexico, 371-372, 374, 392-393, 395, 398, 484, 485, 487, 733; to Europe, 476, 649, 652, 653, 655, 822; despatched agents to other countries, 442-443, 445, 456, 458, 668, 746; minister to Great Britain, 730.
- Buchanan, William I., delegate to Hague conference, 196; to Central American conference, 591-592; to Pan-American conference, 601; mission to Venezuela, 374-376; to Panama, 465n; to Central America, 766.
- Buckalew, Charles R., mission to Paraguay, 665.
- Buckler, William H., agent to confer with Litvinov, 522; attached to U. S. embassy in London, 522, 827; to Paris peace commission, 827.
- Bulgaria, mission of Jackson, 826; of Einstein, 828; of Castle, 829.

- Bullitt, Cuthbert, mission to New Orleans, 833.
- Bullitt, William C., mission to Russia, 523-524.
- Bulwer, Sir Henry, British minister to U. S., 450.
- Burma, mission of Roberts, 337.
- Burton, Allan A., minister to Colombia, 793.
- Burwell, William M., mission to Mexico, 791.
- Bushnell, H. M., mission to Panama, 836.
- Butler, Major General Benjamin F., 833.
- Butler, Pierce, member of constitutional convention, 51, 54.
- Cabot, Samuel, mission to Great Britain, 834.
- Calhoun, John C., opposed to Jackson, 255-256; opinion concerning use of agents, 262; concerning D. Green's mission, 709-710, 743-744, 809-810; despatched agents, 444-445, 645.
- Calhoun, William J., mission to Cuba, 754; to Venezuela, 754-755, 835.
- California, mission of Larkin, 713-717, 775; of Gillespie, 716; of King, 775-776; of Jones, 835.
- Call, Richard K., mission to Cuba, 553-555.
- Cambon, Jules, French ambassador to U. S., 398-399.
- Caminero, José M., envoy from Dominican Republic, 444.
- Campbell, George W., mission to Denmark, 630, 631.
- Campbell, Robert B., consul in Cuba, 563.
- Canada, joint high commission, 304, 306, 603; mission of Neale, 545; of Vail, 558-559; of Nugent, 566; of Ashmun, 566-568; of King, 568-570; of Hoyt, Pepper, J. G. Foster, 570-571; of Taylor, 738-742; of Andrews, 745-747, 822; of J. W. Foster, 797; of Barrell, 832; of St. Clair, 836; of Chilton, 836.
- Cannon, Henry W., delegate to international monetary conference, 582-583.
- Canova, Leon J., mission to Mexico, 493-494.
- Caperton, Admiral William B., mission to Haiti, 513; to Brazil, 826; to Uruguay, 826-827.
- Carmichael, William, assistant to Deane, 8; nominated to Senate as commissioner, 182; chargé to Spain, 695.
- Carothers, George C., mission to Mexico, 492-493.
- Carranza, Venustiano, Mexican general and president, 493-496, 499-503.
- Carroll, Daniel, member of constitutional convention, 51; of first Congress, 86-87, 90-91.
- Castle, William R., Jr., missions to Great Britain, Germany, Serbia, Bulgaria, Czechoslovakia, Jugoslavia, Poland, 829.
- Cathcart, James L., mission to Tunis, 250, 625.
- Cazneau, William L., missions to Dominican Republic, 453-459, 670, 677, 728-729, 736.
- Central America, mission of Mann, 435-436; of Jones, 481-483; of Stephens, 635-639; of Leggett, 636; of Murphy, 639-641; of Buchanan, 766; of Biddle, 830; of Dent, 836; U. S. sent representatives to international conferences, 516, 591-592.
- Ceremonial missions, influenced by act authorizing use of ambassadors, 191-194; agents despatched on, 194-196, 760-767, 825-827.
- Chamberlain, Walter H., delegate to international conference for protection of industrial property, 589n.



- Chambers, Senator Ezekiel F., opinion concerning Panama congress, 237.
- Chandler, Senator William E., opinion concerning negotiating of fisheries treaty, 117n, 290-291, 297.
- Chase, George H., mission to Great Britain, 834.
- Chauncey, Commodore Isaac, mission to Algiers, 625-626.
- Child, Richard Washburn, observer at Lausanne conference, 381; at Genoa economic conference, 615.
- Chile, mission of Devereux, 414; of Worthington, 415; of Havel, 415n; of Prevost, 419; of Bland, 419n; of Hogan, 423; of MacKie, 750n; of White, 766; of Walker, 795-796.
- Chilton, Robert S., Jr., missions to Mexico, Canada, Western Europe, 836.
- China, mission of Murphy, 792n; of Rockhill, 798-799, 825.
- Chincha Islands, mission of Miller, 464n.
- Choate, Joseph H., mission to Great Britain, 195, 763; delegate to Hague conference, 196, 576.
- Church, George E., mission to Ecuador, 687.
- Churchill, William M., mission to Mexico, 373-374, 483-485.
- Claiborne, William C. C., mission to Florida, 530-533.
- Clay, Henry, opinion concerning commission to South America, 220-224, 227, 241; showed interest in South America, 224, 416; despatched agents, 327-329, 699, 832; signed treaty with Denmark, 631.
- Clay, John R., minister to Peru, 749; to Russia, 761.
- Clayton, John M., despatched agents, 446-450, 452, 461, 462-464, 652, 723-724, 725, 746, 832.
- Cleveland, Grover, Congress discussed his use of agents, 117n, 206, 273, 280, 283, 284, 289, 292, 297, 603; despatched other agents, 586n, 589; extended invitation to Pan-American conference, 795; attitude toward Hawaii, 817-818.
- Cleveland, Richard J., vice consul in Cuba, 555.
- Clifford, Nathan, nominated to Senate as special minister to Mexico, 189.
- Clinton, George, quoted, 82.
- Clymer, George, member of first Congress, 90.
- Cobb, Zachery L., mission to Mexico, 497-498.
- Cochin China, mission of Roberts, 337, 339; of Balestier, 345.
- Colby, Bainbridge, policy concerning Russian Baltic provinces, 467-468.
- Coles, Edward, missions to Europe, Russia, 829-830.
- Collier, William M., delegate to international conference on Spitzbergen, 608.
- Colombia, mission of Todd, 317-319, 425-426; of Forsyth, 427; of Hughes (Spain), 539-541; of Morse, 748-749; of Corwine, 748n; of Cushing, 751-753; of Sickles, 792-793; of Trescot, 794n.
- Comanos, N. D., vice consul general in Egypt, 279.
- Committee of Foreign Affairs, Continental Congress, 13, 16-17, 26.
- Committee of Secret Correspondence, Continental Congress, employed agents, 4-13, 25-26; exercised broad powers, 14-15; lost power, 15-16, 25.
- Committee on foreign affairs, House of Representatives, amendment relating to delegates to international communications conference, 146.



- Committee on foreign relations, Senate, reservation limiting President's freedom of appointment, 152; opinion concerning participation in reparation commission, 154-155; concerning use of agents, 228-229, 275, 276, 284-289, 292-295.
- Conger, Edwin H., minister to China, 798-799.
- Congress: Early practice, importance of foreign affairs not realized, 85-88; executive powers increased, 85-86, 88-96, 103-105; expected joint exercise of power of removal, 85-86, 88-92, 94-96; of appointment, 97-99, 102; of treaty-making, 97-100, 103, 104; concerning foreign communications, 103; opinions differed from framers of Constitution, 88-89, 92, 103; relation of President and Senate not changed, 96-103; personal contact between executive and legislature discontinued, 103-105. Relation of to foreign affairs, see appointing power; appropriations; constitutional convention; diplomatic business; treaties.
- Congress of Vienna, Aix-la-Chapelle, classification of diplomatic officers, 191-192, 240n.
- Congressional opinion regarding executive agents, influenced by political bias, 205-207, 310; discussions infrequent, 207, 212, 219, 309, 311; precedents used in debates, 231-237, 247-252, 262, 270, 287-289, 291, 311. Opinion concerning power of appointment, nomination to Senate assumed, 208-209, 211, 213-215, 230; appointment by President unopposed, 209-211, 222, 224, 239, 243, 251, 258, 270, 275, 283, 287, 293, 296-298, 300, 301-302, 311; consent of Senate needed, 253-255, 257, 260-264, 285, 290; Senate consulted for political reasons, 267-268, 280-281. Opinion concerning treaty-making, nomination of negotiators to Senate expected, 213-215, 226, 227, 273-274, 276-279, 285, 290; appointment by President considered sufficient, 240-243, 245, 250, 267, 275, 279, 289, 297, 301, 309, 311; President's initiative questioned, 284, 286, 291, 308-309. See diplomatic service, opinion concerning status; office, question of, congressional opinion; rank and title, congressional opinion.
- Conkling, Senator Roscoe, opinion concerning commission to Dominican Republic, 268-269, 272-273.
- Connell, John, 630.
- Constitution, provisions concerning conduct of foreign affairs, 27, 46, 58, 61, 104, 110-111.
- Constitutional convention, little debate on foreign affairs, 27, 28, 84; emphasis upon treaties, 35, 60; importance of foreign affairs not realized, 58-59, 72; debate concerning control by Congress of policy and treaty-making, 28-32, 37-43, 48, 51-52, 58; of appointments, 31, 37, 40, 48, 51-53; concerning control by Senate of treaty-making, 29-30, 35-37, 43, 45-47, 72; of appointments, 29, 36, 49, 51; concerning power of executive in treaty-making, 29, 47-48, 50, 52-54, 61; in making appointments, 29-31, 38-39; in receiving foreign representatives, 30, 36-37, 51, 58; in controlling diplomatic business, 33, 34, 42-45; in enforcing policy, 37; in filling recess vacancies, 55, 58; concerning joint control by President and Senate through advice and consent to treaties and appointments, 33-34, 44-45, 49-50,

- 52-58, 62-72, 119; concerning share of House of Representatives in treaty-making, 43, 48-50, 52-53; work of committee of detail, 35-37, 43, 44-45, 46, 47n; of five, 51; of eleven, 51, 57; on style, 58.
- Continental Congress, exercised control over foreign affairs, 1, 15-17, 25-26; created Committee of Secret Correspondence, 4, 12; elected and instructed public commissioners, 13-14; investigated conduct of foreign affairs, 17; created Department of Foreign Affairs, 17-18.
- Contingent fund, discussion and use of, 109, 122-123, 128, 134, 140, 177, 208-212, 221-224, 241-242, 259, 260-264, 265-267, 287, 695, 701.
- \*Cook, Daniel Pope, mission to Cuba, 699-700.
- Cookendorfer, Thomas, mission to West Indies, 560n.
- Coolidge, Archibald C., mission to Austria-Hungary, 402; to Sweden, Russia, Austria, Eastern Europe, 829; delegate to Pan-American scientific congress, 602.
- Coolidge, Calvin, messages regarding international conferences, 609, 610.
- Coolidge, T. Jefferson, member of Canadian joint high commission, 603.
- Cooper, George E., mission to Mexico, 835.
- Corbin, Francis, member of Virginia ratifying convention, 81.
- Corea, congressional opinion concerning negotiating of treaty with, 275-279; mission of Shufeldt, 361, 363-364, 743; of Febiger, 362; of Seward, Low, Rodgers, 362-363.
- Corthell, Elmer L., delegate to international conference on navigation, 586n.
- Corwin, E. S., "The President's Control of Foreign Relations," 108-110, 202.
- Corwine, Amos B., mission to New Granada, 748n.
- Costa Rica, mission of Walsh, 791-792; of Dulles, 800-801n.
- Crampton, John F. T., British minister to U. S., 791.
- Crane, Charles R., mission to Turkey, 378-379.
- Crane, Commodore William M., mission to Turkey, 252, 329-330, 332, 704-705.
- Crittenden, Senator John J., opinion concerning commission to South America, 220; concerning use of agents, 262.
- Crowder, General Enoch H., missions to Cuba, 767, 804-805.
- Croxton, Fred C., expert on advisory committee on emigration, League of Nations, 617.
- Cuba, presidents signed treaty, 116n; mission of Bliss, 754n; of Beaupré, Crowder, Malone, 767; of Taft, Bacon, 799-800; of Morgan, 800n; of Crowder, 804-805. Spanish possession, mission of Shaler, 409, 555; of Yznardi, 529; of Wilkinson, 530-532; of Anderson, 532n; of Forbes, 549-551; of Thompson, 550; of J. Biddle, 551-552; of McRee, 552; of Randall, 552; of Poinsett, 553n; of Call, 553-554; of Robinson, 554-555; of Cleveland, 555; of Trist, 556; of Wyer, 556; of Wise, 559-560, 708; of Morris, 560-565; of Parker, 565-566; of Robertson, 698-699; of Cook, 699-700; of Davis, 729-732; of Calhoun, 754; of Gray, 832; of T. Biddle, 833; of Everett, 836.
- Culbertson, William S., mission to Rumania, 827.
- Cumming, Hugh S., member of permanent health organization, League of Nations, 617.

- Curry, Jabez L. M., mission to Spain, 764.
- Cushing, Caleb, opinion concerning treaty-making and power of appointment, 117-118, 126-127; concerning diplomatic service, 131-132, 160-162; concerning agents to Spanish viceregal governments, 526; mission to Japan, 351; to Colombia, 751-753.
- Cutting, A. K., 815, 816.
- Cutting, Captain Nathaniel, secretary to Humphreys, 386.
- Czechoslovakia, missions of Du Bois, 402n; of Castle, 829; of Du Bois, Tick, 829; no agents were connected with recognition of, 465.
- Dalton, Charles H., missions to Great Britain, France, Germany, 820n.
- Danish West Indies, mission of Hawley, 735-736.
- Daugherty, Attorney General Harry M., opinion concerning powers of President and Senate, 107n.
- Davie, William R., member of North Carolina ratifying convention, 83; nominated to Senate as commissioner to France, 184.
- Davis, Brigadier General George B., delegate to Hague conference, 196.
- Davis, Charles W., mission to Cuba, 729-732.
- Davis, Jefferson, Secretary of War, 454.
- Davis, John W., commissioner to China, 353.
- Davis, Major General George W., missions to Guatemala, 765-766, 800n.
- Davis, Norman H., member of Paris peace commission, 403, 829; policy toward Russian Baltic provinces, 468; mission to Spain, 829.
- Davis, Senator Cushman K., opinion concerning Blount mission, 294, 299-300; member of Spanish-American peace commission, 399.
- Dawson, Thomas C., mission to Nicaragua, 506-508, 512; to Honduras, 800; to Venezuela, 826; minister to Dominican Republic, 755-757.
- Day, deputy observer on Rhineland high commission, 598n.
- Day, William R., member of Spanish-American peace commission, 399.
- Dayton, Jonathan, member of constitutional convention, 57.
- Dayton, William L., minister to France, 776, 778-779.
- Deane, Silas, agent of Committee of Secret Correspondence, 5, 7-9, 10n, 11, 13; public commissioner to France, 4, 14.
- Decatur, Commodore Stephen, mission to Algiers, 390-391, 625.
- de la Reintrie, Henry R., mission to Mexico, 485-487.
- Denby, Charles, delegate to international opium conference, 608.
- Denmark, mission of Erving, 626-628; of Forbes, 628-630; of Campbell, 630; of Hughes, 630-631; of Rainals, 631; of Hawley (West Indies), 735-736; of Doolittle, 793; of White, 794n; of O'Brien, 825; of Richardson, 826; of Smith, 828.
- Dent, Louis A., missions to West Indies, Central America, Mexico, 836.
- De Onis, Luis, Spanish minister to U. S., 539-541.
- Department of Foreign Affairs, under Continental Congress, 17-20; under Articles of Confederation, 59-60, 93-94.
- Department of State: Constitutional convention discussed appointment of officers by Congress, 31, 44; inspection of department by President, 31; secretary as member of executive council, 31, 44; appointment of secretary by

- President, 33, 34, 43; nomination by President with approval of Senate, 44; assumed department would conduct routine work, 72. Congress organized department, 41-42, 44, 85-86; considered need temporary, 86-88; increased power of President, 88-95, 114-115; did not anticipate his complete control, 95-96.
- Despatch agents, congressional discussion concerning, 261, 263-264.
- Devereux, Colonel Joseph, missions to Argentina, Chile, Peru, 414-415, 420.
- De Witt, Charles G., chargé to Central America, 636, 637, 639.
- Dickerson, Mahlon, Secretary of Navy, 124.
- Dickinson, John, member of constitutional convention, 51.
- Dillingham, Commander Albert C., mission to Dominican Republic, 174, 308, 755-756.
- Dingley, Representative Nelson, member of Canadian joint high commission, 603.
- Diplomatic business, managed by executive, 120-128.
- Diplomatic service, constitutional provisions concerning, 27, 46, 58, 106; constitutional convention discussed appointment to by Senate, 29-31, 36-37, 48, 49, 53; by President with approval of Senate, 33, 52, 53; power of President to receive foreign representatives, 30, 36-37, 51-58; Hamilton regarded President's power to receive representatives as convenience, 77; expectation that Senate would share in control of, 80, 96n, 99; commissioned to negotiate treaties, 108n, 117, 118, 140, 277, 288; relation of to agents, 108-109, 157-158, 242, 790-819; development of practice regarding control of appointments and grade assigned, 130-131, 181, 191-194, 210, 240, 316-318; opinion concerning status, 131, 158-162, 215-219, 221, 235-236; not open to officers of army or navy, 164.
- Dodge, H. Percival, secretary to Mexican commission, 501; mission to Serbia, 518, 827; to France, 827.
- Dodge, Joshua, missions to Germany, 822; to Austria, 822.
- Dolbeare, Fred, member of delegation to Lausanne conference, 618; of committee for loan for Greek refugees, League of Nations, 618.
- Dole, Sanford B., 817.
- Dolph, Senator Joseph N., opinion concerning negotiating of fisheries treaty, 284; concerning Blount mission, 294.
- Dominican Republic, congressional debate concerning commission to, 267-275; mission of Hogan, 444-445; of Porter, 445-446; of Green, 446-447, 449-450, 722-724; of Walsh, 450-452; of Cazneau, 453-459, 728-729; of McClellan, 454-455, 728-729; of Elliott, 455-456; of Welles, 513-516; of Smith, 670-671, 678-676; of Seward, Porter, 671-673, 736; of Fabens, 676-678; of Hunt, 678-679; of Babcock, 679-683, 737; of Perry, 682-683; of Ames, 684n; of Dillingham, 755-756; of Hollander, 756-757; of Doyle, McIntyre, 757-758; of Osborne, 801; of Gibson, Sterling, Stabler, 801-802; of Fort, Sullivan, Smith, 802-803; of Phelan, 836. See Santo Domingo.
- Donaldson, Joseph, Jr., mission to Algiers, 25, 388-389; to Tripoli, Tunis, 623-624.
- Donelson, Andrew J., minister to Germany, 478-479; chargé to Texas, 718, 791.

- Doolittle, Senator James R., mission to Denmark, 793.
- Dorset, Marion, unofficial representative on anthrax committee, League of Nations, 617.
- Douglas, Alfred, mission to Peru, 827.
- Douglass, Frederick, minister to Haiti, 795.
- Doyle, William T. S., mission to Dominican Republic, 757-758.
- Dresel, Ellis Loring, missions to Germany, 403-405, 828; to Switzerland, 828; to France, 828.
- Duane, James, member of Continental Congress, 18.
- Du Bois, Arthur W., attached to Paris peace commission, 402n; missions to Czechoslovakia, Austria, Russia, Yugoslavia, Hungary, Ukraine, 402n; to Czechoslovakia, Poland, 829.
- Du Bois, W. E. B., mission to Liberia, 827.
- Dudley, Thomas H., consul in Liverpool, 751n.
- Dulles, John F., missions to Nicaragua, Costa Rica, Panama, 800-801n.
- Dumas, Charles W. F., agent of Committee of Secret Correspondence, 5-7, 8; mission to Netherlands, 620.
- Duniway, C. A., quoted, 784n, 785n.
- Dupont de Nemours, Pierre S., mission to France, 773-774.
- Dwight, Theodore, mission to Europe, 837.
- East, Far, mission of Roberts, 335-339, 706-707; of Balestier, 344-346; of Perry, 360; of Ringgold, 360-361; of Morrow, 759n; of Lockhart, 831.
- Eaton, William, mission to Tunis, 250, 625.
- Ecuador, mission of Pickett, 339-340, 644; of Tappan, 641-645; of Sweetser, 642-643, 645-646; of McAfee, 643-644; of Smith, 645-647; of Church, 687; of Walker, 687-689.
- Edgecomb, Willard W., mission to Orange Free State, 342.
- Edmunds, Senator George F., opinion concerning negotiating of fisheries treaty, 284, 301.
- Edward VII of Great Britain, 195, 763-764, 765.
- Egypt, mission of Comanos, 279; of Hodgson, 556-558, 707-708.
- Einstein, Lewis, mission to Turkey, 828; to Bulgaria, 828.
- Elkus, Abram I., ambassador to Turkey, 377.
- Elliot, Charles, British chargé to Texas, 775.
- Elliott, Jonathan, mission to Dominican Republic, 455-456, 457.
- Ellis, William H., mission to Ethiopia, 690n.
- Ellsworth, Oliver, nominated to Senate as commissioner to France, 184.
- English, George Bethune, mission to Turkey, 323-327, 703.
- Erving, George W., special minister to Denmark, 186, 627-628, 631-632; chargé to Spain, 473, 476n; mission to Europe, 832.
- Esthonia, mission of Gade, 467-469; of Young, 469.
- Ethiopia, mission of Skinner, 365; of Ellis, 690n.
- Europe, mission of McRae, 572-574, 696-697; of Grund, 732-733; of Kasson, 753-754; of Shakespeare, 759n; of Schuyler, 780n; of House, 805-807; of Mann, 822-823; of Coolidge, 829; of Coles, 829-830; of Erving, 832; of Saunders, 833; of Sharpe, 833-834; of Wood, 836; of Chilton, 836; of Hunter, 837; of Dwight, 837.
- Evans, Lemuel D., mission to Mexico, 833.
- Evarts, William M., opinion concerning negotiating of fisheries

- treaty, 284, 290; despatched delegates to international patents conference, 587-588; mission to Great Britain, 750-751, 778; was interested in Isthmus Canal Company, 751-752.
- Everett, Alexander H., opinion on status of commercial agents in Cuba, 180n; mission to Japan, 352; to Cuba, 836.
- Everett, Edward, opinion concerning commercial agents, 168, 178; minister to Great Britain, 711, 809, 811.
- Executive, relation of to foreign affairs, see appointing power; appropriations; Congress; congressional opinion; constitutional convention; diplomatic business; "Federalist"; ratifying conventions; treaties.
- Executive council, discussion of in constitutional convention, 27, 31, 34, 37, 44; opinion concerning Senate as council, 70-72, 81-82, 98, 102, 103; heads of departments as council, 103.
- Executive departments, discussion of in constitutional convention, 27, 33; relation of to Congress, 40-41, 44-45; constitutional provision concerning, 41; development of executive control of, 42; personal contact of with first Congress, 97, 101-103; secretaries may despatch agents, 123-128, 247-248. See agents, executive, heads of departments as.
- Fabens, Joseph W., mission to Dominican Republic, 676-678; to Nicaragua, 831.
- Fairbanks, Senator Charles W., member of Canadian joint high commission, 603.
- Falkner, Roland P., mission to Liberia, 831.
- Famin, Joseph Etienne, mission to Tunis, 389, 624-625.
- Farrand, M., quoted, 47n.
- Faulkner, Senator Charles J., member of Canadian joint high commission, 603.
- Febiger, Captain John C., mission to Corea, 362.
- Febiger, Colonel Lea, mission to Siam, 825.
- "Federalist," discussion of treaty-making as an executive function, 73-74, 104, 694; as controlled by President and Senate, 74-77, 81; in relation to House of Representatives, 75n, 76; of appointing power, 77; of President's power to receive foreign representatives as a convenience, 77; of joint power of removal, 90; foreign affairs occupied small part of total discussion, 84.
- Ferguson, Charles, missions to Siam, Japan, 831.
- Field, David Dudley, delegate to international congress on commercial law, 586n.
- Fiji Islands, mission of Scidmore, 835.
- Fillmore, Millard, despatched agents, 341, 353, 450, 452.
- Finland, mission of Haynes, 466-467.
- Fish, Hamilton, relation to Dominican Republic, 164-165, 174, 206, 268, 678-681; to Canada, 738-739; member of British joint high commission, 288.
- Fishback, George W., missions to Panama, South America, West Indies, 836.
- Fisheries treaty, congressional debate on negotiating of, 117n, 279-291; negotiators of, 166n, 603.
- Fitz, Albert, mission to British West Indies, 832.
- Fitzpatrick, Richard, mission to Paraguay, 666-668.
- Fitzsimons, Thomas, member of first Congress, 90-91.
- Fletcher, Henry P., ambassador to Mexico, 496, 504; delegate to Pan-American conference, 602.



- Florida, mission of Seagrove, 527; of Wilkinson, 530-532; of Claiborne, 530-533; of Matthews, McKee, 533-536; of Mitchell, 536-537; of Pinckney, 537.
- Folch, Vicente, Spanish governor of Florida, 534, 535.
- Forbes, Colonel James G., mission to Cuba, 549-551.
- Forbes, Francis, delegate to international conferences for protection of industrial property, 589n.
- Forbes, John M., mission to Argentina, 270, 422; to Denmark, 628-630.
- Forbes, John Murray, agent of Navy Department, 124.
- Forbes, Paul S., mission to Spain, 737-738, 753.
- Forsyth, John, opinion concerning agents, 178n; during congressional debates, 214n, 218, 222-224, 231, 238, 241-242, 247-248, 252, 262; despatched agents, 343, 642-643, 644; minister to Spain, 551; policy toward Central America, 641.
- Forsyth, John, minister to Mexico, 483-484.
- Forsyth, Samuel D., agent from and to Venezuela, Colombia, 426-427.
- Fort, John Franklin, mission to Haiti, 509-512; to Dominican Republic, 802-803.
- Foster, John G., mission to Canada, 570-571.
- Foster, John W., mission to Spain, 191, 754n; to Great Britain, Russia, 796-797; to Canada, 797; member of Canadian joint high commission, 603; of fur seal conference, 797; minister to Russia, 761; "Practice of American Diplomacy," 816-817; statement concerning Hawaii, 817-818.
- Fox, Gustavus V., mission to Russia, 760-761.
- Frame of Constitution, intention concerning conduct of diplomatic business, 27; control of departments, 42, 88; joint conduct of negotiations, 49-51, 53, 54, 61, 72, 74, 77, 115-116, 119, 163, 202; treaties, 50-51, 59, 112-113.
- France, early diplomatic relations, 4-14, 24, 60; mission of Redfield, 751n; of Dupont, 773-774; of Weed, 776-778; of Hughes, 778-779; of Sanford, 780n; of Schofield, 780-788; of Morton, 788-789; of Wolcott, Stevenson, Paine, 797; of House, 805-806; of G. Walker, Marble, Horton, Dalton, 820n; of Dodge, 827; of Dresel, 828; of Baker, 829; of Lippmann, 829; of W. M. Walker, 833; of Broadhead, Tuck, 837.
- Franklin, Benjamin, public commissioner to France, 4, 8, 14, 16; relation to agents of Committee of Secret Correspondence, 6-7, 9, 10, 11, 620; prestige of committee affected by his resignation, 15; agent sent abroad to examine his papers, 837.
- Frazier, Arthur Hugh, mission to Austria, 405.
- Freeman, mission to Guatemala, 801n.
- Frelinghuysen, Frederick T., ignored Senate resolution regarding use of agents, 278; was not interested in Pan-American conference, 575, 795.
- Frye, Senator William P., opinion concerning negotiating of fisheries treaty, 280-282, 284; concerning Blount mission, 294; member of Spanish-American peace commission, 399.
- Fuller, Paul, mission to Mexico, 499.
- Fuller, Paul, Jr., mission to Haiti, 512-513.
- Gade, Commander John Allyne, mission to Esthonia, Latvia, Lithuania, 467-469.



- Galindo, Colonel Juan, agent from Central America, 640-641.
- Gallatin, Albert, peace commissioner at Ghent, 187, 399; negotiated concerning trade, 700; minister to Great Britain, 701.
- Gardiner, George A., claims against Mexico, 835.
- Garfield, James A., despatched agent, 275.
- Garibaldi, Giuseppe, 779-780.
- Gautier, Manuel M., Dominican minister, 269, 682.
- Geddings, Henry D., delegate to international sanitary conference, 605-606.
- Geisinger, Commodore David, 353, 707.
- George, Senator James Z., opinion concerning agents, 190n, 301-303.
- Germany, treaty at close of Great War, 152, 155-157, 213-214, 404, 594; mission of Gherardi, 402; of Dresel, 403-405, 828; of Mann, 476-479, 647-656, 745; of Seaton, 479-480; of Wolcott, Stevenson, Paine, 797; of House, 805-806; of Walker, Marble, Horton, Dalton, 820n; of Dodge, 822; of Bartholdt, Wolfram, 826; of Jackson, 827-828; of Castle, 829.
- Gerry, Elbridge, member of constitutional convention, 54-55, 56, 57; of first Congress, 90-91; nominated to Senate as commissioner to France, 184.
- Ghent, treaty of, 187, 212-219, 400n, 541, 542, 546, 572n, 696, 700.
- Gherardi, Rear Admiral Bancroft, mission to Haiti, 795.
- Gherardi, Walter R., mission to Germany, 402.
- Gibson, Hugh S., mission to Dominican Republic, 801-802.
- Gillespie, Lieutenant Archibald H., mission to California, 716, 717, 723.
- Gilman, Nicholas, member of constitutional convention, 51; of first Congress, 91.
- Glynn, Commander James, mission to Japan, 353-357.
- Goodrick, William W., delegate to international conference on maritime law, 589n.
- Gore, Senator Christopher, opinion concerning President's power to originate missions, 212-214, 217-218, 231.
- Gorham, Nathaniel, member of constitutional convention, 49, 54; of Massachusetts ratifying convention, 80.
- Goss, George G., mission to Mexico, 747.
- Goward, Gustavus, mission to Samoa, 686; to South America, 836.
- Graham, John, commissioner to South America, 220-222, 270, 416-419.
- Grant, Ulysses S., relation to Dominican Republic, 164-165, 174, 189, 206, 267-275, 678-685, 737; to Cuba, 737; to Canada, 739; to Mexico, 781, 784; nominated to Senate as commissioner to Mexico, 190, 279, 288.
- Grant-Smith, Ulysses, mission to Hungary, 405.
- Graves, Charles H., mission to Norway, 825; to Sweden, 825.
- Graves, General William S., mission to Siberia, 519-521.
- Gray, George, opinion concerning Blount mission, 300-301; member of Spanish-American peace commission, 399; of Mexican joint commission, 503-504; of Canadian joint high commission, 603.
- Gray, Vincent, mission to Cuba, 832.
- Grayson, William, member of Virginia ratifying convention, 82n.
- Great Britain, early diplomatic relations, 59-61; mission of Morris, 368-371; of Green, 708-711, 774-

- 775, 809-811; of Evarts, 750-751, 778; of Whiting, 751n; of Redfield, 751n; of Rush, 759n; of Reid, 763, 764; of Choate, 763; of Roosevelt, White, 765; of Weed, 776-777; of McIlvaine, 778-779; of Sanford, 780; of Foster, 796-797; of Wolcott, Stevenson, Paine, 797; of House, 805-806; of G. Walker, Marble, Horton, Dalton, 820n; of Hammond, 825; of Buckler, 827; of Jackson, 827-828; of Hurley, 828; of Baker, 829; of Wyvell, 829; of Lippmann, 829; of Castle, 829; of W. M. Walker, 833; of Chase, 834; of Bayard, 834; of Cabot, 834; of Barry, 836; of Howard, 836-837. See *British West Indies*; *Canada*; *Oregon*.
- Great War, missions connected with, 142, 144, 147n, 152-157, 168n, 174, 175, 197, 199-200, 213-214, 251-252, 311, 376-382, 399, 400-405, 465-470, 509, 517-525, 593-601, 615-616, 743, 758-759, 760, 789-790, 806-808, 827-829.
- Greece, mission' of Somerville, 437; of Marsh, 660-663; of Pryor, 663; of Schurmann, 826.
- Green, Benjamin E., mission to Dominican Republic, 446-447, 449-450, 460, 462, 722-724; to Haiti, 447-449, 452, 724-725; chargé to Mexico, 712.
- Green, Duff, mission to Great Britain, 708-711, 743-744, 774-775, 809-811; to Mexico; 733-734; father of B. E. Green, 723.
- Greenebaum, Berthold, consul in Samoa, 811-815.
- Greenhow, Robert, mission to Mexico, 835.
- Grew, Joseph C., observer at Lausanne conferences, 381; ambassador to Turkey, 382n; represented U. S. at armament conferences, League of Nations, 618.
- Griggs, Attorney General John W., opinion concerning appointing power, 127.
- Grund, Francis J., mission to Europe, 732-733.
- Guadaloupe Hidalgo, treaty of, see *Trist*.
- Guatemala, missions of Davis, 765-766, 800n; of Thurston, Freeman, Mallet-Prevost, Ames, Meader, 801n.
- Guild, Curtis, Jr., mission to Mexico, 766-767.
- Gummeré, Samuel R., representative at Algeciras conference, 308, 589-590.
- Gunther, Franklin M., delegate to international conference on Spitzbergen, 608.
- Gurley, Ralph R., mission to Liberia, 460-461.
- Haiti, mission of Green, 447-449, 724-725; of Walsh, 450-453; of Fort, Smith, Bailly-Blanchard, 509-512; of Fuller, 512-513; of Caperton, 513; of Gherardi, 795; of Russell, 803-804; of Knapp, 831. See *Santo Domingo*.
- Hale, John P., minister to Spain, 737.
- Hale, William B., mission to Mexico, 310n, 498-499.
- Hall, H. L., mission to Mexico, 499-500.
- Hall, Henry C., minister to Central America, 794.
- Halsey, Thomas L., mission to Argentina, 415n.
- Halstead, Albert, mission to Austria, 405n.
- Hamilton, Alexander, suggested G. Morris' mission, 24n, 371n; member of constitutional convention, 32-35, 43, 46, 58; of New York ratifying convention, 79-80; opinions in "Federalist," 73-77, 90.
- Hamilton, James A., opinion concerning office, 164n; concerning Tazewell, 255.

- Hamlin, Charles S., delegate to fur seal conference, 759n, 797.
- Hammett, Alexander, consul in Naples, 632.
- Hammond, John Hays, mission to Great Britain, 173, 825.
- Hannegan, Edward A., minister to Prussia, 479n.
- Hanover, missions of Mann, 647-651, 655-656.
- Harbord, Major General James G., mission to Armenia, 379, 466.
- Harding, Warren G., secured opinion concerning powers of President and Senate, 107n; asked authority for representation at international conference, 143n; complained of limitations on appointing power, 153; despatched agents, 176, 311, 404, 594, 597n, 804n.
- Harris, I. George, mission to Austria, 822.
- Harris, Townsend, mission to Siam, 657-658; consul general in Japan, 659.
- Harrison, Benjamin, asked general appropriation for international conferences, 137-138, 586, 591, 613; statement concerning Hawaii, 817.
- Harrison, Robert M., consul in St. Thomas, 629; agent to British West Indies, 700-703.
- Harrison, William H., 639.
- Harvey, George, observer at Cannes conference, 615.
- Harvey, James E., mission to investigate preparations for filibustering expedition, 832.
- Haskell, Lewis W., observer at conferences on communications and customs, League of Nations, 618.
- Haskins, Charles H., attached to Paris peace commission, 403.
- Havel, Matthew A., mission to Chile, 415n.
- Hawaii, mission of Hull, Jones, 334-335; of Spalding, 734-735; of Bates, 762; of Blount, 817-818.
- Hawley, Charles R., mission to Danish West Indies, 735-736.
- Hay, John, ambassador to Great Britain, 763.
- Hayne, Senator Robert Y., opinion concerning Panama congress, 227-228.
- Haynes, Thornwell, mission to Finland, 467.
- Heck, Lewis, mission to Switzerland, 828.
- Henning, Edward J., delegate to international conference on emigration, 609.
- Herrick, Myron T., delegate to Paris reparation conference, 616.
- Herron, George Davis, delegate to Prinkipo conference, 522-523.
- Hess, Colonel Ralph H., observer at Brussels financial conference, League of Nations, 600; representative at Paris financial conference, 615.
- Higginson, Nathaniel, mission to British West Indies, 528-529.
- Hill, David Jayne, delegate to Hague conference, 196.
- Hill, W. P., delegate to international conference on agricultural institute, 589n.
- Hitt, R. S. Reynolds, delegate to international sanitary conference, 606.
- Hoar, Ebenezer R., member of British joint high commission, 288.
- Hoar, Senator George F., opinion concerning Congressmen as agents, 162-163, 175n, 202, 304-307; concerning Blount mission, 295-299, 301, 305.
- Hodge, William, agent of Committee of Secret Correspondence, 10.
- Hodgson, William B., missions to Turkey, Egypt, 556-558, 707-708.

- Hogan, John B., mission to Dominican Republic, 444-445, 447, 453, 723.
- Hogan, Michael, mission to Chile, 423.
- Hollander, Jacob, mission to Dominican Republic, 756-757.
- Home Department, proposed in constitutional convention, 31; in first Congress, 87.
- Honduras, mission of Welles, 516-517; of Dawson, 800; of Walker, 800n; of Mallet-Prevost, Ames, 801n.
- Hopkins, Edward A., mission to Paraguay, 440-443, 667.
- Horsely, Senator Outerbridge, opinion concerning diplomatic office, 215, 216-217, 218-219.
- Horton, S. Dana, delegate to international monetary conference, 581n; missions to Great Britain, France, Germany, 820n.
- Houghton, Alanson B., in London during reparation conference, 616.
- House, Colonel Edward M., mission to Great Britain, 198, 805; to Europe, 198-199, 805-807; opinion of Congress concerning, 205; member of "Inquiry," 401, 806, 829; of Paris peace commission, 401, 807.
- House of Representatives, discussion of in relation to treaty-making during constitutional convention, 43, 48-50, 52-53; in "Federalist," 75n, 76; in ratifying conventions, 84, 85; may suggest negotiations, 352, 361. See committee on foreign affairs.
- Houston, Major General Samuel, 717.
- Howard, C. H., mission to Great Britain, 836-837.
- Hoyt, Henry M., mission to Canada, 570-571.
- Hubbard, Richard B., minister to Japan, 116; delegate to international conference on revision of treaties with Japan, 589n.
- Huerta, Victoriano, president of Mexico, 488, 490, 491, 501-503, 819.
- Hughes, Archbishop John, mission to France, 778-779.
- Hughes, Charles Evans, opinion concerning participation in League of Nations, 148-149; despatched agents, 505-506, 594; delegate to Pan-American conference, 602; in London during reparation conference, 616.
- Hughes, Christopher, mission to Colombia (Spain), 539-541; to Denmark, 630-631.
- Hull, Commodore Isaac, mission to Hawaii, 335.
- Hülsemann, Johan G., Austrian chargé to U. S., 464, 725-726.
- Humphreys, Colonel David, mission to Algiers, 25, 217, 249-250, 386-388, 623; to Portugal, 132n, 209-212, 316-317, 318, 366, 623, 695-696; to Spain, 209, 695-696; to Tunis, 389, 623-624; to Morocco, 622-623; to Tripoli, 623-624.
- Hungary, treaty at close of Great War, 152, 155-157, 213-214, 594; mission of Coolidge, 402; of Du Bois, 402n; of Grant-Smith, 405; of Mann, 462-464, 725-726.
- Hunt, Benjamin S., mission to Dominican Republic, 678-679.
- Hunt, William H., mission to Russia, 761.
- Hunter, William, mission to Europe, 837.
- Huntington, Benjamin, member of first Congress, 87-88.
- Hurley, William L., mission to Great Britain, 828.
- Husband, William W., representative at conference on immigration, League of Nations, 617.
- Indians, treaties with, 97, 101, 125-126, 233, 247-248.
- Ingalls, General Rufus, accompanied Babcock, 683.

Ingraham, J. H., mission to Panama, 439-440.

International conferences: Act of 1913 attempted to check executive control of, 129-130, 134-135, 138-152, 155, 591, 601, 607-611, 613; invitations to accepted by executive, 129, 134, 136-138, 140-143, 150, 188; issued by executive, 129, 134-136, 141n, 143-148, 150-151, 584-585, 603-605; appropriations for controlled by Congress, 136-145, 149-151; appointments to consented to by Senate, 146, 574-575, 579, 581, 586n; made by President alone, 575-578, 580, 582-591, 605-607; Congress might claim share in instructing delegates to, 148-149, 153. Conferences — agricultural institute, 589n; alcoholism, 606, 608, 610; Algeciras, 308, 589-590; Americanists, 610; applied chemistry, 604; bankers, 611; British joint high commission, 189, 288, 289n, 290; Canadian joint high commission, 304, 306, 603; Cannes, 615; cattle breeding, 143n; Central America, 516, 591-592, 611; chambers of commerce, 607; commercial law, 586n; communications, 144-147; Congo, 588n, 593n; copyright, 589, 606; cotton, 610; dental, 607; economic—Genoa, 615; —Hague, 615; education, 140-141, 607, 610; electrical, 585; emigration, 609; engineering, 611; farming, 610; financial—Brussels, 615; —Paris, 615-616; fisheries, 283, 603; fur seal, 605, 759n, 797; Hague, 196, 576; home education, 610; hygiene and demography, 139n, 604; immigration, 603; industrial insurance, 604; industrial property, 589n, 605; international law, 197, 609; inter-parliamentary union, 610; labor, 147-148;

Lausanne, 381, 618; letters of exchange, 606; marine, 584; maritime, 604; maritime law, 589n, 606, 609; meridian, 583-584; Mexican, 501-506; monetary, 304, 579-583, 603; naval—London, 587, 759-760; naval armament — Washington, 143-144, 176, 197, 311, 601, 760; navigation, 586n; opium, 149, 607, 608; Panama, 188, 224-237, 238, 248, 574-575; Pan-American, 142, 575-576, 601-602; —financial, 603, 611; —jurists, 602-603; —medical, 602, 611; —sanitary, 602, 608-609; —scientific, 602, 610; patents, 587-588; Porto Rosiga, 579n; poultry, 610; Prinkipo, 522-523; prison, 583, 604; purity federation, 142, 607; radiotelegraph, 606; railways, 605; Red Cross, 584n, 587, 605; reparation—London, 616; —Paris, 615, 616; revision of treaties with Japan, 589n, 592-593; Samoan, 586n; sanitary, 586n, 603, 605-606; San Remo, 599; school hygiene, 141n, 604; Spitzbergen, 608; standard of value, 175n; statistical, 576-578; submarine cables, 588; tuberculosis, 604; wireless telegraphy, 586-587, 759-760. See League of Nations; observers; rank and title.

International expositions, 578-580, 586n, 611-615.

Iredell, James, member of North Carolina ratifying convention, 80.

Irvine, Baptis, mission to Venezuela, 424-425, 426, 427.

Italy, mission of Sanford, 779-780; of Baker, 829; of Lippmann, 829; of Lord, 836.

Jackson, Andrew, opinion concerning agents, 163-164; Congress opposed his use of agents, 206, 238,

- 253, 255-258, 260, 292; despatched agents, 331, 336.
- Jackson, Henry R., minister to Mexico, 815-816.
- Jackson, James, member of first Congress, 96n.
- Jackson, John B., mission to Serbia, 825; to Bulgaria, 826; to Germany, Great Britain, 827-828.
- Japan, mission of Roberts, 337-339; of Cushing, 351; of Everett, 352; of Biddle, 352; of Glynn, 353-355; of Aulick, 355-357; of Perry, 357-359; of McLane, 360; of Abbot, Adams, 659-660; of Knox, Pershing, Reynolds, 765; of MacVeagh, 765; of Ferguson, 831; of Low, 834; international conferences on revision of treaties with, 589n, 592-593.
- Jay, John, approved W. Bingham's work, 10; was Secretary of Foreign Affairs, 21-24, 25-26, 42, 59, 60, 85, 97, 102n, 104, 371n; wrote part of "Federalist," 73-74, 75n, 76, 78, 104, 694; negotiated treaty with Great Britain, 111, 113, 116n, 182-183, 207-208, 528, 700, 834.
- Jay, John, delegate to international congress on patents, 588n.
- Jay, Peter A., mission to Rumania, 827.
- Jefferson, Thomas, appointed public commissioner to France, 14; despatched agents, 25, 180-182, 235-237, 383-387, 530-531, 620n, 621-622, 695, 773-774; special ministers, 182, 185-186; opinion concerning conduct of foreign affairs, 85, 103-104, 112, 114, 121, 130, 132n, 229.
- Jeffery, Robert E., mission to Uruguay, 826-827; to Paraguay, 827.
- Johnson, Andrew, relation to Congress, 42; to Dominican Republic, 677-678; to Mexico, 784, 788-789.
- Johnson, Major Bascom, unofficial representative at conference on traffic in women and children, League of Nations, 616.
- Johnson, Reverdy, mission to New Orleans, 833.
- Johnson, Robert W., observer at San Remo conference, 599.
- Johnson, William S., member of constitutional convention, 49-50, 58, 77.
- Johnston, Charles M., mission to Mexico, 831.
- Jones, Captain Thomas ap Catesby, mission to Hawaii, 335.
- Jones, John Paul, mission to Algiers, 216, 217, 232-235, 237, 383-386.
- Jones, Senator John P., delegate to international monetary conference, 582-583.
- Jones, William Carey, mission to Central America, 481-483; to Mexico, California, 835.
- Jordan, David Starr, delegate to fur seal conference, 759n, 797.
- Jowett, F., cited, 378n.
- Juarez, Benito, leader of Mexican constitutional party, 373-374, 483-486, 734.
- Judiciary committee, House of Representatives, opinion concerning Representatives as agents, 175, 307-308.
- Judiciary committee, Senate, opinion concerning powers of President and Senate, 107n; concerning Senators as agents, 306-307.
- Jugoslavia, mission of Du Bois, 402n; of Dodge, 518; of Castle, 829.
- Kane, Senator Elias K., presented amendment concerning negotiating of treaty with Turkey, 253-254.
- Kasson, John A., member of Samoan conference, 586n, 753; of Congo conference, 588n, 593n; of Canadian joint high commission, 603;



- mission to Rumania, Serbia, 686;  
to negotiate reciprocity treaties,  
753-754.
- Kellogg, Frank B., delegate to repara-  
tion conferences in London, Paris,  
616.
- Kendall, Amos, prepared report on  
agents in Navy Department,  
124n.
- Kennedy, John P., Secretary of Navy,  
358.
- Kernan, Major General Francis J.,  
mission to Poland, 402.
- Kerr, John B., chargé to Nicaragua,  
792.
- Keys, James W., mission to Mexico,  
497.
- King, C. W., 351.
- King, Hamilton, mission to Siam,  
196n, 825.
- King, Henry C., mission to Turkey,  
378-379.
- King, Jonas, claims against Greece,  
660-663.
- King, Preston, mission to Canada,  
568-570.
- King, Rufus, member of constitu-  
tional convention, 30, 51, 53,  
55, 58; of Senate, 100n.
- King, Senator William H., resolution  
relating to appointing power of  
President, 804n.
- King, Senator William R., proviso  
concerning negotiating of treaty  
with Turkey, 253-254.
- King, Thomas B., mission to Cali-  
fornia, 775-776.
- Knapp, Rear Admiral Harry S., mis-  
sion to Haiti, 831.
- Knight, Admiral Austin M., mission  
to Siberia, 519-520.
- Knox, Henry, Secretary of War, 97,  
102n.
- Knox, Philander C., opinion con-  
cerning rank and title, 195-196;  
relation to Nicaragua, 507; mis-  
sion to Japan, 765.
- Kolchak, Alexander, leader in Siberia  
during Russian revolution, 520,  
522-523, 524.
- Krudener, Paul, Baron, Russian  
minister to U. S., 332, 333.
- Lafayette, Marquis de, corresponded  
with Jay, 22-23; was accom-  
panied by Somerville, 437; mis-  
sion to Spain, 768; mission in  
behalf of, 768-773; service re-  
garded as precedent, 779.
- Lamar, Joseph R., member of Mexi-  
can commission, 501-503.
- Lands, W. F., mission to Russia, 828.
- Lane, Franklin K., member of Mexi-  
can joint commission, 503-504.
- Lansing, Robert, referred to law of  
1913, 145; member of Paris  
peace commission, 168n, 251-  
252, 399, 401; despatched agent,  
404; policy concerning Russian  
Baltic provinces, 468; concerning  
intervention in Haiti, 509.
- La Reintrie, see de la Reintrie.
- Larkin, Thomas O., mission to Cali-  
fornia, 713-717, 723, 775.
- Latvia, mission of Gade, 467-469;  
of Young, 469.
- Laughlin, A. M., delegate to interna-  
tional sanitary conference, 606.
- League of Nations, U. S. participation  
in, 148-149, 600, 616-618; an-  
thrax committee, 617; arma-  
ments, 618; communications,  
618; customs, 618; emigration,  
617; finance, 600; health organi-  
zation, 617; hydrographic bu-  
reau, 616-617; loan for Greek  
refugees, 618; obscene publica-  
tions, 618; opium, 618; sanitary,  
617; serums, 617; traffic in  
women and children, 616.
- Lear, Tobias, mission to Tripoli, 390;  
to Tunis, 390.
- Lee, Arthur, agent of Committee of  
Secret Correspondence, 4-5, 8,  
12, 14; public commissioner to  
France, 4, 14.



- Lee, Attorney General Charles, opinion concerning appointing power, 125-126.
- Lee, Fitzhugh, consul general in Cuba, 754.
- Lee, Richard Henry, member of Continental Congress, 14, 17.
- Lee, William, commercial agent of Committee of Secret Correspondence, 11-12.
- Legaré, Attorney General Hugh S., 809.
- Leggett, William, mission to Central America, 636.
- Lehmann, Frederick W., member of Mexican commission, 501-503.
- Letcher, Robert P., minister to Mexico, 791.
- Lewis, Jacob, missions to Santo Domingo, 428-429, 431.
- Liberia, mission of Gurley, 460-461; of Adams, 462n; of Du Bois, 827; of Falkner, Sale, Scott, 831.
- Lincoln, Abraham, recognized Liberia, 461n; message regarding Berlin exhibition, 612; agent despatched to Europe after his assassination, 833-834.
- Lind, John, mission to Mexico, 205, 309, 489-491, 492, 498, 818-819.
- Lippmann, Walter, missions to Great Britain, France, Italy, 829.
- Lithuania, mission of Gade, 467-469; of Young, 469.
- Livingston, Edward, opinion concerning negotiating of treaty with Turkey, 238, 240-243, 245-247, 249-252, 288, 300.
- Livingston, Gilbert, member of New York ratifying convention, 81-82.
- Livingston, Robert R., Secretary of Foreign Affairs, 18-21; member of New York ratifying convention, 78-79; minister to France, 185.
- Locke, John, quoted, 73.
- Lockhart, Frank P., mission to Far East, 831.
- Lodge, Senator Henry Cabot, opinion concerning executive appointments, 145, 152-155, 593-594; delegate to naval armament conference, 311.
- Logan, Colonel James A., Jr., observer on reparation commission, 595-596; assistant at London reparation conference, 616; delegate to Paris reparation conference, 616; member of committee for loan for Greek refugees, League of Nations, 618.
- Long, Boaz W., minister to Cuba, 804.
- Loo Choo Islands, mission of Perry, 360.
- Lopez, Narciso, leader of filibustering expeditions, 560-566.
- Lord, Robert, mission to Poland, 402.
- Lord, W. Scott, mission to Italy, 836.
- Lorillard, George L., mission to Serbia, 517-518, 828.
- Low, Frederick F., mission to Corea, 362-363; to Japan, 834.
- Lowndes, Representative William J., opinion concerning commission to South America, 223.
- Lowry, Robert K., commercial agent to Venezuela, 413, 414, 415n.
- Lyons, Richard B. P., Lord, British minister to U. S., 567-568, 569-570.
- McAfee, Robert, mission to Ecuador, 643-644.
- McClellan, Captain George B., agent of War Department, 454-455, 728-729.
- McCluney, Captain William J., mission to Borneo, 658-659.
- McCook, Edward M., minister to Hawaii, 735.
- McCook, Major General Alexander M., mission to Russia, 762.
- McCormick, Vance, attached to Paris peace commission, 403.
- McCreary, Representative James B., delegate to international monetary conference, 582-583.

- McCully, Rear Admiral Newton A., mission to Russia, 524-525.
- McIlvaine, Bishop Charles P., mission to Great Britain, 778-779.
- McIntosh, Leonidas, mission to investigate preparations for filibustering expedition, 832-833.
- McIntyre, Brigadier General Frank, mission to Dominican Republic, 757-758.
- McKean, Thomas, member of Pennsylvania ratifying convention, 81.
- McKee, Colonel John, mission to Florida, 533-536.
- Mackenzie, Alexander Slidell, mission to Santa Anna, 394-396.
- MacKie, James S., missions to Bolivia, Chile, 750n.
- McKinley, William, asked general appropriation for international expositions, 138n, 586n, 591, 613; appointed Congressmen as agents, 175-176, 303, 306-307, 399-400; despatched other agents, 194, 576n, 754.
- McLane, Robert M., mission to Japan, 360; minister to Mexico, 485-486; delegate to international conference on submarine cables, 588n.
- MacLay, Senator William, disapproved Washington's use of agents, 210.
- McLeod, Keith, observer at Brussels financial conference, League of Nations, 600.
- McNally, James C., mission to Switzerland, 829.
- McRae, Alexander, mission to Europe, 572-574, 696-697, 820n.
- McRee, William, mission to Cuba, 552.
- MacVeagh, Charles, mission to Japan, 765.
- Madison, James, member of constitutional convention, 29, 30, 38-40, 47-55, 70n, 80; of first Congress, 88, 90-92, 95-96; opinion concerning status of diplomatic service, 158-159, 215; nominated special ministers to Senate, 186-188, 212, 214, 627; despatched agents, 390-391, 407, 411, 471, 531, 533-535.
- Magoon, Charles E., provisional governor of Cuba, 799.
- Magruder, Alexander R., unofficial representative at conference on obscene publications, League of Nations, 618.
- Magruder, Eli, mission to British West Indies, 544-545.
- Mahany, Rowland B., attendance at emigration committee, League of Nations, announced, 617.
- Maley, Captain William, mission to Algiers, 790n.
- Mallet-Prevost, Severo, missions to Guatemala, Honduras, Nicaragua, 801n.
- Malone, Dudley Field, mission to Cuba, 767.
- Mann, A. Dudley, despatched on four missions, 172; to Switzerland, 346-351, 367; to Hungary, 460, 462-464, 725-726; to Germany, 476-479, 647-656, 745; to Western Europe, 822-823.
- Mann, Representative James R., statement concerning participation in international conferences, 141n.
- Mann, Thomas N., mission to Central America, 435-436.
- Marble, Manton, missions to Great Britain, France, Germany, 820n.
- Marcy, William L., opinion concerning agents, 173; despatched agents, 456, 730-732.
- Marling, John L., minister to Guatemala, 481.
- Marsh, George P., mission to Greece, 660-663; to Persia, 664.
- Marshall, James, mission to Prussia, 768-773.
- Marshall, John, opinion concerning President in relation to foreign

- affairs, 114; concerning question of office, 161, 170; nominated to Senate as commissioner to France, 184; brother of James Marshall, 768.
- Martin, Luther, member of Maryland House of Representatives, 70.
- Mason, George, member of constitutional convention, 47; of Virginia ratifying convention, 70, 80n, 81.
- Matthews, General George, mission to Florida, 533-537.
- Maximilian of Mexico, 781, 782.
- Meade, Commander Richard W., mission to Samoa, 118n, 464n.
- Meador, Richard D., mission to Guatemala, 801n.
- Mearis, Malcolm W., mission to investigate preparations for filibustering expedition, 832.
- Mears, John H., claims against Mexico, 835.
- Mecklenburg, mission of Mann, 651-652.
- Mellon, Andrew, in London during reparation conference, 616.
- Mendenhall, Thomas C., mission to Alaska, 834.
- Mercer, John F., member of constitutional convention, 45, 46, 55.
- Merriam, C. Hart, mission to Alaska, 834.
- Mexico, mission of Parrott, 371-373, 719-720; of Churchill, 373-374, 483-485; of M. Y. Beach, 392-393, 720; of Trist, 396-398, 720-722; of Shaler, 409-410; of Poinsett, 434-435; of de la Reintrie, 485-487; of Lind, 487-492, 818-819; of Carothers, 492-493; of Canova, 493-494; of Silliman, 494-495; of Belt, 495-496; of Keys, 497; of Parker, 497; of Thurston, 497; of Rodgers, 497; of Cobb, 497-498; of Hale, 498-499; of Fuller, 499; of Hall, 499-500; of West, 500-501; of Lamar, Lehman, 501-503; of Lane, Mott, Gray, 503-504; of Warren, Payne, 505-506; of Robinson (Spain), 537-538; of Thompson, 711-712; of Ward, 727; of Green, 733-734; of Goss, 747; of Guild, 766-767; of Shufeldt, 789n; of Burwell, 791; of Sedgwick, 815-817; of Johnston, 831; of Evans, 833; of H. N. Beach, 834; of W. C. Jones, 835; of Greenhow, 835; of Slacum, B. Smith, 835; of E. Smith, 835; of Mordecai, Cooper, 835; of Bowes, 835; of Spofford, 835; of Dent, 836; of Chilton, 836. See California; Texas.
- Miles, Basil, mission to Russia, 828.
- Miles, William, mission to Peru, 830.
- Miller, Attorney General William H. H., opinion concerning importance of constitutional usage, 203-204.
- Miller, David Hunter, mission to Europe, 829.
- Miller, Wesley, mission to Chincha Islands, 464n.
- Mills, Senator Elijah H., opinion concerning Panama congress, 232, 237.
- Miramón, Miguel, leader of Mexican conservative party, 373-374, 483, 485-486, 734.
- Miranda, Francesco, 407, 410, 424.
- Mitchell, David R., mission to Florida, 536-537.
- Moffat, Thomas P., consul in Nicaragua, 508n.
- Monroe, James, member of Virginia ratifying convention, 78, 81; opinion concerning status of diplomatic service, 158-159, 215, 219; nominated to Senate as special minister, 185-186, 774; congressional opinion concerning his use of agents, 224, 228; relation to Latin America, 318, 407, 411-412, 414, 417, 419, 421, 427, 434, 538, 539-541, 549; to Japan, 338; to Algiers, 338; to Santo

- Domingo, 429, 443; to Spain, 472, 552; to Great Britain, 542-544, 546, 700; to Europe, 573.
- Moore, John Bassett, member of commission of jurists on international law, 197.
- Mordecai, Alfred, mission to Mexico, 835.
- Morfit, Henry M., mission to Texas, 437-439.
- Morgan, Edwin V., minister to Cuba, 799-800.
- Morgan, Henry H., missions to Cuba, 800n.
- Morgan, Senator John T., opinion concerning negotiating of fisheries treaty, 117n, 282-284; 286, 289n, 291; concerning Blount mission, 292-294.
- Morgenthau, Henry, mission to Turkey, 376-378; ambassador to Turkey, 828.
- Morier, John P., British chargé to U. S., 534.
- Morocco, early treaty, 60; mission of Barclay, 620-622; of Humphreys, 622-623; of Simpson, 623.
- Morris, Anthony, mission to Spain, 471-476.
- Morris, Commodore Charles, mission to Venezuela, Argentina, 422; to Cuba, 560-565, 566.
- Morris, Gouverneur, corresponded with Jay and Washington, 24; member of constitutional convention, 34-37, 43-58, 72; mission to Great Britain, 157, 166, 169, 208n, 209-212, 214, 216, 219, 226, 368-371; attempted to assist Lafayette, 769-772.
- Morris, Robert, secured appointment of T. Morris, 11; member of Continental Congress, 14.
- Morris, Roland S., mission to Siberia, 518-521.
- Morris, Thomas, commercial agent of Committee of Secret Correspondence, 11.
- Morrow, Everett, mission to Far East, 759n.
- Morse, Isaac E., mission to New Granada, 748-749, 751.
- Morton, Levi P., delegate to international conference on submarine cables, 588.
- Morton, Oliver P., opinion concerning commission to Dominican Republic, 268, 271, 274; mission to France, 784, 788-789.
- Motley, J. Lothrop, minister to Great Britain, 739.
- Mott, John R., member of Mexican joint commission, 503-504.
- Muhlenburg, Henry A., minister to Austria, 635.
- Murphy, Robert C., mission to China, 792n.
- Murphy, William S., mission to Central America, 261-262, 639-641; minister to Texas, 709.
- Muscat, mission of Roberts, 336, 337, 338.
- Nagel, Charles, delegate to fur seal conference, 605.
- Naples, mission of Appleton, 631-633; of Pinkney, 632.
- Napoleon III, 777, 782-783, 787, 789.
- Napoleon, Prince, 776, 783, 788.
- Navoni, Nicholas, mission to Turkey, 328-330, 556-557.
- Neale, Augustus, mission to Canada, British West Indies, 545.
- Nelson, Attorney General John, opinion concerning appointing power, 123-124.
- Nelson, Samuel, member of British joint high commission, 288.
- Netherlands, early diplomatic relations, 6, 10, 60; mission of Dumas, 620.
- Neville, Edwin, unofficial representative on advisory committee on traffic in opium, League of Nations, 618.
- New Granada, see Colombia.

- Newman, Captain Timothy, mission to Algiers, 790n.
- Niblack, Albert P., member of directing committee of hydrographic bureau, League of Nations, 616-617.
- Nicaragua, mission of Jones, 481-483; of Dawson, 506-508; of Phelps, 794; of Dulles, 800n; of Mallet-Prevost, Ames, Stimson, 801n; or Fabens, 831.
- Nielsen, Fred K., delegate to international conference on Spitzbergen, 608.
- Niles, Nathaniel, mission to Sardinia, 259, 342-343, 366; to Austria, 633-635, 822.
- Norway, mission of Graves, 825.
- Noyes, Edward F., delegate to international conference on patents, 587-588.
- Noyes, Pierrepont B., observer on Rhineland high commission, 597, 598n.
- O'Brien, Captain Richard, mission to Tunis, 250, 389, 624, 625; to Tripoli, 624; consul in Algiers, 790n.
- O'Brien, Thomas J., mission to Denmark, 825.
- Observers, 148, 150, 153-154, 156, 381, 574, 582, 592-601, 615-618.
- Office, question of, in relation to duties, 157, 161-166, 170, 176-177; to commissions, 157, 166-170, 178, 183-184, 198-199; to diplomatic privileges, 161, 167, 201, 202; to temporary employment, 165-166, 170-173, 179-180; to opinion of government, 173-177; to emolument, 177; to rank and title, 200-202. Congressional opinion concerning, in relation to commissions, 214-215, 228, 237, 244-246; to nomination, 215, 229, 270-271, 272-273; to duties, 215, 216, 245, 273-274, 290, 295-298, 300-303; to source of remuneration, 221-222, 245; to secrecy, 235; to diplomatic privileges, 244-245, 298-299; to temporary employment, 247, 251, 261, 300-303, 308; to title, 270, 301-302, 311-312; to acts of binding force, 296-298.
- Offley, David, missions to Turkey, 252, 320, 327-333, 704-706.
- Oldenburg, mission of Mann, 651-652.
- Olney, Richard, opinion concerning invitations to international exposition, 614.
- Onis, see De Onis.
- Orange Free State, mission of Edgecomb, 342.
- O'Rear, John D., mission to Bolivia, 826.
- Oregon, mission of Biddle, Prevost, 545-548; of Slacum, 830.
- Osborne, John E., mission to Dominican Republic, 801.
- Page, Lieutenant Thomas Jefferson, mission to Paraguay, 341, 664-668.
- Page, Walter H., ambassador to Great Britain, 779n, 805, 806.
- Paine, Charles J., missions to Great Britain, France, Germany, 797.
- Paine, Thomas, secretary of Committee of Foreign Affairs, Continental Congress, 16.
- Palmer, Aaron H., 355.
- Panama, mission of Ingraham, 439-440; of Buchanan, 465n; of Corwine, 748n; of Sickles, 792-793; of Dulles, 800-801n; of Bushnell, 836; of Fishback, 836.
- Paraguay, mission of Pendleton, 340-341; of Schenck, 340-341; of Page, 341, 664-665; of Hopkins, 440-443; of Buckalew, 665; of Fitzpatrick, 666-668; of Bowlin, 668-670; of Walker, 795-796; of Jeffery, 827.
- Paris peace conference, see Great War.
- Parker, Charles B., mission to Mexico, 497.

- Parker, Commodore Foxhall A., mission to Cuba, 565-566.
- Parrott, William S., mission to Mexico, 371-373, 719-720.
- Paterson, William, member of constitutional convention, 31-32; of first Congress, 92.
- Pauncefote, Sir Julian, British ambassador to U. S., 194.
- Payne, John Barton, member of Mexican joint commission, 505-506.
- Pendleton, George H., minister to Germany, 813.
- Pendleton, John S., mission to Paraguay, 340-341, 367, 664.
- Penfield, Frederic C., mission to Austria-Hungary, 826.
- Penrose, Senator Boies, resolution on status of Hale, 310n.
- Pepper, Charles M., mission to Canada, 570-571.
- Pérot, James and William, mission to British West Indies, 529.
- Perry, Captain Oliver H., mission to Venezuela, Argentina, 421-422, 426, 427.
- Perry, Commodore Matthew C., mission to Japan, 353, 357-360, 659, 674n, 759n; to Loo Choo Islands, 360, 367; to Far East, 360, 367.
- Perry, Raymond H., commercial agent in Dominican Republic, 267, 682-683.
- Pershing, General John J., commanded punitive expedition in Mexico, 503; mission to Japan, 765; to Peru, 827.
- Persia, mission of Marsh, 664; of Spence, 664; of Russell, 826.
- Peru, mission of Devereux, 414; of Worthington, 415; of Prevost (Spain), 419, 548-549; of Robinson (Spain), 419-420, 549; of Tudor, 423; of Walker, 795-796; of Douglas, 827; of Pershing, 827; of Miles, 830.
- Pettit, Captain Walter W., mission to Russia, 523.
- Phelan, James D., mission to Dominican Republic, 836.
- Phelps, Captain S. L., mission to Nicaragua, 794.
- Philip, Hoffman, mission to Uruguay, 827.
- Pickering, Timothy, commissioned to negotiate, 111; opinion concerning agents, 168, 183-184.
- Pickett, James C., mission to Ecuador, 258-260, 339-340, 367, 641-642, 643-644.
- Pierce, Franklin, despatched agents, 453-454, 729, 736.
- Pinckney, Charles, member of constitutional convention, 29-34, 43, 44, 53; nominated to Senate as special minister, 185-186.
- Pinckney, Charles Cotesworth, member of South Carolina legislature, 83-84; nominated to Senate as special commissioner to France, 184; minister to France, 771n.
- Pinckney, Thomas, nominated to Senate as special envoy to Spain, 184; minister to Great Britain, 235, 384-385, 769, 770, 772; mission to Florida, 537; to British West Indies, 542-544, 696.
- Pinkney, William, nominated to Senate as special minister, 186-187, 632.
- Poinsett, Joel R., nominated to Senate as special minister, 188; mission to Argentina, 270, 406-409, 412, 413, 414; to Mexico, 434-435; to Porto Rico, 553n; to Cuba, 553n.
- Poland, mission of Kernan, Lord, 402; of Castle, 829; of Du Bois, Tick, 829.
- Polk, James K., relation to Mexico, 188-189, 371-372, 392-398, 713-722, 775, 791; to Japan, 351; to Paraguay, 440; to Dominican Republic, 445; to Germany, 478, 649; opinion concerning secret fund, 265-267.



- Porter, Admiral David D., missions to Dominican Republic, 445-446, 447, 671-673, 723, 736.
- Porter, Commodore David, chargé to Turkey, 334, 556-557; correspondence concerning Japan, 338.
- Porter, Horace, delegate to Hague conference, 196.
- Porter, Representative Stephen G., delegate to international opium conference, 149n; unofficial representative on advisory committee on traffic in opium, League of Nations, 618.
- Portugal, mission of Humphreys, 316-317, 695; of Bryan, 825.
- President, see executive.
- Preston, Senator William C., opinion concerning use of agents, 262-263.
- Prevost, John B., mission to Chile, Peru, 226, 270, 419-420, 421, 422, 423, 548-549; to Oregon, 545-548; report concerning Hawaii, 334-335.
- Pringle, John J., member of South Carolina legislature, 83n.
- Prussia, early treaty, 60; mission of Marshall, 766-773.
- Pryor, Roger, mission to Greece, 663.
- Putnam, James O., delegate to international conference on patents, 587-588.
- Putnam, William L., commissioner to negotiate fisheries treaty, 166n, 207, 283, 292, 603.
- Raguet, Condly, mission to Brazil, 697-698, 714.
- Rainalds, John, mission to Denmark, 631.
- Ramsay, Senator Alexander, 742.
- Randall, Thomas, mission to Cuba, 552.
- Randolph, Edmund, member of constitutional convention, 28-29, 35-37; despatched agents, 183, 387.
- Rank and title, was not assigned to agents by early Presidents, 180-190; statute creating rank of ambassador influenced use of, 191-194; was assigned to ceremonial agents, 194-196; to delegates to international conferences, 196-197; to political agents, 197-200; does not confer office, 200-202; congressional opinion concerning, 200, 205, 221, 269, 270-271, 295-296, 301-302, 311. Use of title of ambassador, 106, 172-173, 180, 194-199; of minister, 106, 173, 196-199; of commissioner, 173, 196.
- Rathbone, Albert, observer on reparation commission, 594-596.
- Ratifying conventions, opinion concerning small number of treaties, 59; initiative of Senate, 78-81; joint power of Senate and President, 81-82; leading rôle of executive, 82-85; participation by House of Representatives, 84, 85; concerning appointments, 82; little debate on foreign affairs, 84.
- Ravndal, Gabriel B., mission to Turkey, 382n.
- Read, Captain George C., accompanied W. Taylor, 431-432.
- Redfield, Isaac J., missions to Great Britain, France, 751n.
- Reid, Whitelaw, missions to Great Britain, 173, 194-195, 763, 764; member of Spanish-American peace commission, 399.
- Reintrie, see de la Reintrie.
- Reparation commission, 152-157, 593-597, 599-600.
- Reynolds, Rear Admiral Alfred, mission to Japan, 765.
- Rhind, Charles, mission to Turkey, 163-164, 331-334, 706.
- Rhineland high commission, 597.
- Richardson, Judge William A., opinion concerning question of office, 201.



- Richardson, Norval, mission to Denmark, 826.
- Riddle, John W., mission to Argentina, 827.
- Ringgold, Commander Cadwallader, mission to Far East, 360-361, 367.
- Rives, G. L., quoted, 267n.
- Roberts, Edmund, missions to Far East, 206, 258, 262, 335-339, 344, 345, 351, 360, 367, 441, 656-657, 706-707.
- Robertson, Thomas Bolling, mission to Cuba, 698-699.
- Robinson, Jeremy, mission to Peru, 419-420, 549; to Cuba, 554-555.
- Robinson, John H., mission to Mexico, 537-538.
- Robison, Admiral Samuel S., military governor of Dominican Republic, 516n.
- Rochambeau, Comte de, agent sent abroad to examine his papers, 837.
- Rockhill, William W., missions to China, 798-799, 825.
- Rodgers, Commodore John, mission to Turkey, 326-328, 704.
- Rodgers, James Linn, mission to Mexico, 497; adviser to Mexican joint commission, 504.
- Rodgers, Rear Admiral John, mission to Corea, 362.
- Rodney, Caesar A., commissioner to South America, 220-222, 226, 270, 416-419.
- Rogers, H. Gold, chargé to Sardinia, 344.
- Roosevelt, Theodore, author of biography of G. Morris, 24n; relation to Central America, 465n, 592, 766; to Cuba, 799; practice regarding international conferences and exhibitions, 576n, 589, 613; mission to Great Britain, 765.
- Root, Elihu, mission to Russia, 106, 173, 199-200, 205, 789-790; to South America, 799.
- Rose, Uriah M., delegate to Hague conference, 196.
- Rowe, Leo S., secretary to Mexican joint commission, 504.
- Ruggles, Samuel, B., delegate to international statistical congresses, 576-578; to Paris exposition, 578-579; to international monetary conference, 579-580.
- Rumania, recognized without despatching agents, 465; mission of Kasson, 686; of Jay, 827; of Culbertson, 827.
- Rush, Richard, nominated to Senate as special minister, 185; acting Secretary of State, 416-417; minister to Great Britain, 573, 629, 700; mission to Great Britain, 759n.
- Russell, Brigadier General John H., mission to Haiti, 803-804.
- Russell, Charles W., mission to Persia, 826.
- Russell, William W., minister to Venezuela, 376.
- Russia, mission of Du Bois, 402n; of Buckler, 518-519, 521-522; of White, Herron, 522-523; of Bullitt, 523-524; of McCully, 524-525; of Stevens, 758-759; of Fox, 760-761; of Hunt, Baldwin, 761; of Breckinridge, McCook, Selfridge, 762; of Root, 789-790; of Schuetze, 790n; of Foster, 796-797; of Taylor, Lands, Miles, Smith, 828; of Coolidge, 829; of Coles, 829-830. See Siberia.
- Rutledge, John, member of constitutional convention, 35-37, 57.
- Sackett, General Delos B., interpreter for Babcock, 682-683.
- St. Clair, Francis O., mission to Canada, 836.
- Sale, George, mission to Liberia, 831.
- Samoa, mission of Meade, 464n; of Goward, 686; of Tripp, 689-690; of Bates, 811-815; of Steinberger, 831; international conference concerning, 586n, 753.

- Sanford, Henry S., delegate to Congo conference, 588n; mission to Italy, 779-780; to Great Britain, 780; to France, 780n.
- San Marino, mission of White, 365.
- Santa Anna, Antonio Lopez, Mexican general and president, 394-396, 712, 727.
- Santo Domingo, missions of Lewis, 428-429, 431; of Tyler, 429-430; of Taylor, 430-432; of Wyer, 432-433; of Armstrong, 433. See Dominican Republic; Haiti.
- Santos, Julio R., 687-688.
- Sarawak, mission of Balestier, 346.
- Sardinia, mission of Niles, 342-343; of Van Buren, 343-344.
- Sargent, Henry, mission to Switzerland, 351n.
- Sargent, Senator Aaron A., resolution regarding negotiations with Corea, 363.
- Saunders, B. W., mission to Europe, 833.
- Saxony, mission of White, 764.
- Schenck, Robert C., member of British joint high commission, 288; mission to Paraguay, 340-341.
- Schmedeman, Albert G., delegate to international conference on Spitzbergen, 608.
- Schofield, General John M., mission to France, 780-788, 789.
- Schomburgh, Sir Robert, British consul in Dominican Republic, 455.
- Schuetze, Lieutenant William H., mission to Russia, 790n.
- Schurman, Jacob G., mission to Greece, 826.
- Schuyler, Eugene, mission to Serbia, 686.
- Schuyler, George L., mission to Europe, 780n.
- Scidmore, George H., mission to Fiji, 835.
- Scott, Alexander, mission to Venezuela, 270, 410-413, 414, 424.
- Scott, Emmit J., mission to Liberia, 831.
- Scott, Senator John, opinion concerning commission to Dominican Republic, 271-272.
- Seagrove, James, mission to Florida, 527.
- Seaton, Gales, mission to Germany, 479-480.
- Secretary of Foreign Affairs, Continental Congress and Articles of Confederation, powers, 18-20, 25-26, 50; Livingston, 18-21; Jay, 21-26.
- Secretary of State, duties of discussed in constitutional convention, 34, 43-45; regarded as temporary, 86-88; provided for by statute, 92-94, 115, 121-122, 123, 139; appeared in Senate, 42, 97; commissioned to negotiate treaties, 108n, 118, 250-252, 259, 276.
- Sedgwick, Arthur G., mission to Mexico, 815-817.
- Sedgwick, Representative Theodore, opinion concerning contingent fund, 209.
- Selfridge, Rear Admiral Thomas O., mission to Russia, 762.
- Selkirk Settlement, mission of Taylor, 738-742.
- Senate, relation of to foreign affairs, see appointing power; committee on foreign relations; Congress; congressional opinion; constitutional convention; diplomatic business; "Federalist"; ratifying conventions: treaties.
- Serbia, recognized without despatching agents, 465; mission of Lorillard, 517-518, 828; of Dodge, 518, 827; of Kasson, 686; of Schuyler, 686; of Jackson, 825; of Castle, 829.
- Sergeant, John, delegate to Panama congress, 226, 228.
- Sevier, Ambrose H., nominated to Senate as special minister to Mexico, 189.

- Seward, Frederick W., mission to Dominican Republic, 671-673, 736.
- Seward, George F., mission to Corea, 362.
- Seward, O. R., opinion concerning Doolittle's mission, 793n.
- Seward, William H., relation to Europe, 169, 579, 776, 778, 780-787; to Dominican Republic, 458-460, 670, 671, 673, 676-678, 736; to Liberia, 462n; to Mexico, 487; to Canada, 567-569; to Hawaii, 735; to Denmark, 735-736, 793; to South America, 752; opinion concerning use of agents, 264n.
- Shakespeare, Edward O., mission to Europe, 759n.
- Shaler, William, mission to Algiers, 390-391, 625-626; to Mexico, 409-410, 413, 539n; attached to peace commission at Ghent, 400n, 572n; commercial agent in Cuba, 409, 555.
- Shannon, Wilson, minister to Mexico, 371-372.
- Sharpe, George H., mission to Europe, 833-834; to Canadian border, 834.
- Shaw, T., secretary to observers at Brussels financial conference, League of Nations, 600.
- Sherman, John, opinion concerning appointing power, 126n; concerning negotiating of fisheries treaty, 284, 289-290, 291; concerning Blount mission, 294; despatched agent, 763.
- Sherman, Roger, member of constitutional convention, 32, 40, 51, 52, 56, 57; of first Congress, 90, 91, 208-209.
- Short, William, nominated to Senate as special commissioner, 182; minister to Netherlands, 620n, 769; mission to Spain, 768.
- Shufeldt, Commodore Robert W., mission to Corea, 174, 275, 361, 363-364, 743; to Mexico, 789n.
- Siam, mission of Roberts, 337, 338; of Balestier, 345, 656-657; of Harris, 657-658; of Bradley, 658; of Tarler, 825; of King, Febiger, 825; of Ferguson, 831.
- Siberia, missions of Morris, Graves, Knight, 519-521.
- Sickles, General Daniel E., minister to Spain, 737; mission to Colombia, 792-793.
- Silliman, John P., mission to Mexico, 494-497.
- Simpson, James, mission to Morocco, 623.
- Skinner, Robert P., mission to Ethiopia, 365.
- Skjoldebrand, Pierre Eric, Humphreys authorized to use, 388.
- Slacum, George, mission to Mexico, 835.
- Slacum, William A., mission to Oregon, 830.
- Smith, Buckingham, mission to Mexico, 835.
- Smith, Charles Cogswell, mission to Haiti, 509-512; to Dominican Republic, 802-803.
- Smith, Delazon, mission to Ecuador, 645-647.
- Smith, Edward, mission to Mexico, 835.
- Smith, Guy Crosswell, missions to Russia, Denmark, 828.
- Smith, J. Somers, commercial agent in Dominican Republic, 670-671, 673-676.
- Smith, John F., member of special commission to China, 189.
- Smith, Lieutenant Colonel Clarence D., observer on reparation commission, 597n; at Porto Rosiga conference, 597n.
- Smith, Senator Samuel, opinion concerning Gore resolutions, 218; concerning negotiating of treaty with Turkey, 252.
- Smith, William, nominated to Senate as special minister, 185.
- Smithson, James, 759n.

- Snow, Edwin M., delegate to international statistical congress, 578.
- Solberg, Thorwald, delegate to international copyright conference, 606.
- Somerville, William C., mission to Greece, 436-437.
- South America, mission of Rodney, Graham, Bland, 219-224, 416-419; of Baxley, 749-750; of Goward, 836; of Fishback, 836.
- Southard, Samuel L., Secretary of Navy, 705.
- Spaight, Richard D., member of constitutional convention, 55, 57.
- Spain, early diplomatic relations, 21-22, 60, 61; mission of Morris, 471-476; of Humphreys, 695; of Forbes, 737-738, 753; of Foster, 754n; of Curry, 764; of Short, Lafayette, 768; of Whitridge, 825; of Davis, 829; of Broadhead, Tuck, 837. See Colombia; Cuba; Florida; Mexico; Peru.
- Spalding, Thomas, mission to British West Indies, 543-545.
- Spalding, Zephaniah S., mission to Hawaii, 734-735.
- Spanish-American peace commission, 174-175, 213, 304, 305, 399-400.
- Sparks, Jared, 30.
- Special ministers, nominated to Senate, 182-190, 258-260, 288.
- Spence, Carroll, mission to Persia, 664.
- Sperry, Rear Admiral Charles S., delegate to Hague conference, 196.
- Spofford, Richard S., mission to Mexico, 835.
- Spooner, Senator John C., opinion concerning executive conduct of foreign relations, 122, 238, 308-309.
- Stabler, Jordan H., mission to Dominican Republic, 801-802.
- Steffens, Lincoln, accompanied W. C. Bullitt, 523.
- Steinberger, A. B., mission to Samoa, 831.
- Stephens, John L., mission to Central America, 262, 635-639.
- Sterling, Frederick A., mission to Dominican Republic, 801-802.
- Sternberg, Major George M., delegate to international sanitary conference, 586n.
- Stevens, John F., mission to Russia, 758-759.
- Stevens, John L., minister to Hawaii, 293, 297, 818.
- Stevenson, Adlai E., missions to Great Britain, France, Germany, 797.
- Stimson, Frederic J., mission to Brazil, 826.
- Stimson, Henry L., mission to Nicaragua, 801n.
- Stockton, Rear Admiral Charles H., delegate to London naval conference, 587.
- Stone, Colonel David L., adviser and deputy observer on Rhineland high commission, 598n.
- Storer, Bellamy, delegate to international conference for protection of industrial property, 589n; minister to Spain, 764.
- Story, Thomas, agent of Committee of Secret Correspondence, 10-11, 14.
- Sullivan, James F., minister to Dominican Republic, 511, 802, 836.
- Sullivan, Peter J., minister to Colombia, 752.
- Sulu, mission of Bates, 690.
- Sumner, Senator Charles, opinion concerning commission to Dominican Republic, 164, 189-190, 206, 268-271, 273, 684; communications from Seward, 264n, 674n.
- Sussdorff, Louis A., chargé to Netherlands, 615.
- Sweden, early treaty, 60; mission of Graves, 825; of Coolidge, 829.
- Sweetser, Seth, mission to Ecuador, 642-643, 645-646.

- Switzerland, mission of Mann, 346-351; of Sargent, 351n; of Dresel, 828; of Heck, 828; of McNally, 829.
- Syria, mission of Biddle, 834.
- Taft, William H., relation to international conferences and expositions, 129, 141n, 591, 604, 613; to Mexico, 488; to Canada, 571; to Dominican Republic, 758; to Japan, 765; to Great Britain, 779n; to Cuba, 799-800; opinion concerning importance of constitutional usage, 203-204.
- Tappan, Benjamin, Jr., mission to Ecuador, 642-645, 646.
- Tappan, Senator Benjamin, opinion concerning use of agents, 262.
- Tarler, George C., mission to Siam, 825.
- Tassara, Gabriel Garcia y, Spanish minister to U. S., 459.
- Taylor, Graham R., mission to Russia, 828.
- Taylor, James W., mission to Canada, 738-742.
- Taylor, William, mission to Santo Domingo, 430-432; to Mexico, 433-434.
- Taylor, Zachary, relation to Dominican Republic, 450; to Hungary, 462, 464, 725; to Germany, 478; to Cuba, 561-563.
- Tazewell, Senator Littleton W., opinion concerning negotiating of treaty with Turkey, 167, 238-240, 242-245, 248, 252-255, 260; concerning Gore resolutions, 218; concerning Panama congress, 231-237.
- Teller, Senator Henry M., opinion concerning negotiating of fisheries treaty, 290.
- Tenney, Charles D., member of international opium commission, 607.
- Terrell, Edwin H., delegate to international monetary conference, 582-583.
- Texas, mission of Morfit, 437-439; of Wickliffe, 717-719, 775; of Vell, 791.
- Thach, C. C., Jr., quoted, 46.
- Thacher, John M., delegate to international conference on patents, 588n.
- Thompson, Gilbert L., mission to Cuba, 550; to Mexico, 711-712.
- Thornton, Sir Edward, British minister to U. S., 739.
- Thurman, Senator Allen G., opinion concerning commission to Dominican Republic, 271.
- Thurston, Walter C., mission to Mexico, 497; to Guatemala, 801n.
- Tick, H. J., mission to Czechoslovakia, Poland, 829.
- Todd, Charles S., mission to Colombia, 317-319, 366, 425-426; to Venezuela, 425-426.
- Todd, Robert, attendance at emigration committee, League of Nations, announced, 617.
- Tonga Islands, mission of Bates, 364-365.
- Torres, Manuel, agent from Colombia, 427.
- Townsend, Lawrence, delegate to international conference for protection of industrial property, 589n; on maritime law, 589n.
- Treat, R. Albert Wallace, mission to Turkey, 382n.
- Treaties: Senate may consent to, 112, 120, 122, 151; advise changes, 112, 117, 118-200; reject, 120; action taken concerning, 152, 155-157, 213-214, 334, 335, 382, 384, 403-404, 464n, 593-594, 597n, 600, 625, 650, 657, 683-684, 700, 793. President may consult Senate, 112, 120; is channel of communication, 113-115, 119; controls negotiation, 115-120, 126-127, 140, 155-156, 208; checked by act of 1913, 139-140, 148-149. See Congress; congress-

- sional opinion; constitutional convention; "Federalist"; ratifying conventions.
- Trescot, William M., nominated to Senate as special commissioner, 189, 190, 278-279, 288, 795n; negotiated with Colombian minister, 794n.
- Treudley, M., quoted, 430n.
- Tripoli, mission of Lear, 390; of Humphreys, 623-624; of Barlow, O'Brien, 624.
- Tripp, Bartlett, mission to Samoa, 689-690.
- Trist, Nicholas P., mission to Mexico, 118n, 166n, 167, 188, 213, 267n, 275, 396-398, 720-722; consul in Cuba, 556.
- Tuck, Somerville P., missions to France, Spain, West Indies, 837.
- Tudor, William, mission to Peru, 423.
- Tunis, mission of Barlow, 389, 624-625; of Humphreys, 389, 623-624; of Famin, O'Brien, 389, 624-625; of Lear, 390; of Eaton, Cathcart, O'Brien, 625.
- Turkey, congressional debate concerning negotiating of treaty with, 237-258; mission of Bainbridge, 319-322; of Bradish, 321-323; of English, 323-326, 703; of Rodgers, 326-328, 704; of Offley, Crane, 327-331, 704-705; of Navoni, 328-330; of Wyer, 330; of Rhind, Offley, Biddle, 331-334, 705-706; of Morgenthau, 376-378; of King, Crane, 378-379; of Harbord, 379; of Bristol, 380-382; of Grew, 381; of Ravndal, Barnes, Treat, 382n; of Hodgson, 556-558, 707-708; of Einstein, 828.
- Tyler, John, opinion regarding use of agents, 206-207, 238, 245, 252, 253-258, 260; relation to Texas, 371, 709-711, 712, 717, 744, 791, 809; to Dominican Republic, 444-445.
- Tyler, Septimus, mission to Santo Domingo, 429-432.
- Underwood, Senator Oscar W., delegate to naval armament conference, 311.
- Upshur, Abel P., despatched agent, 744, 809.
- Uruguay, mission of Walker, 795-796; of Jeffery, Caperton, 826-827; of Philip, 827.
- Vail, Aaron, mission to Canada, 558-559.
- Van Buren, Abraham, mission to Sardinia, 343-344.
- Van Buren, Martin, message concerning agents, 107n, 258-260; relation to Turkey, 238, 255, 256, 331; to Sardinia, 342-344; to Cuba, 553; to Central America, 638, 639.
- Van Dyke, Henry, delegate to international opium conference, 608.
- Van Ness, John P., prepared report on agents in Navy Department, 124n.
- Vans Murray, William, nominated to Senate as special commissioner to France, 184.
- Vaughn, Charles R., British minister to U. S., 641.
- Venable, William E., minister to Guatemala, 481.
- Venezuela, mission of Buchanan, 374-376; of Brewer, 375; of Scott, 410-413; of Lowry, 413; of Perry, 421-422; of Morris, 422; of Irvine, 424-425; of Todd, 425-426; of Forsyth, 426-427; of Calhoun, 754-755, 835; ceremonial, 762; of Walker, 795-796; of Dawson, 826.
- Versailles, treaty of, see Great War.
- Victoria, Queen, 194-195, 763.
- Vignaud, Henry, delegate to international conference on submarine cables, 588.

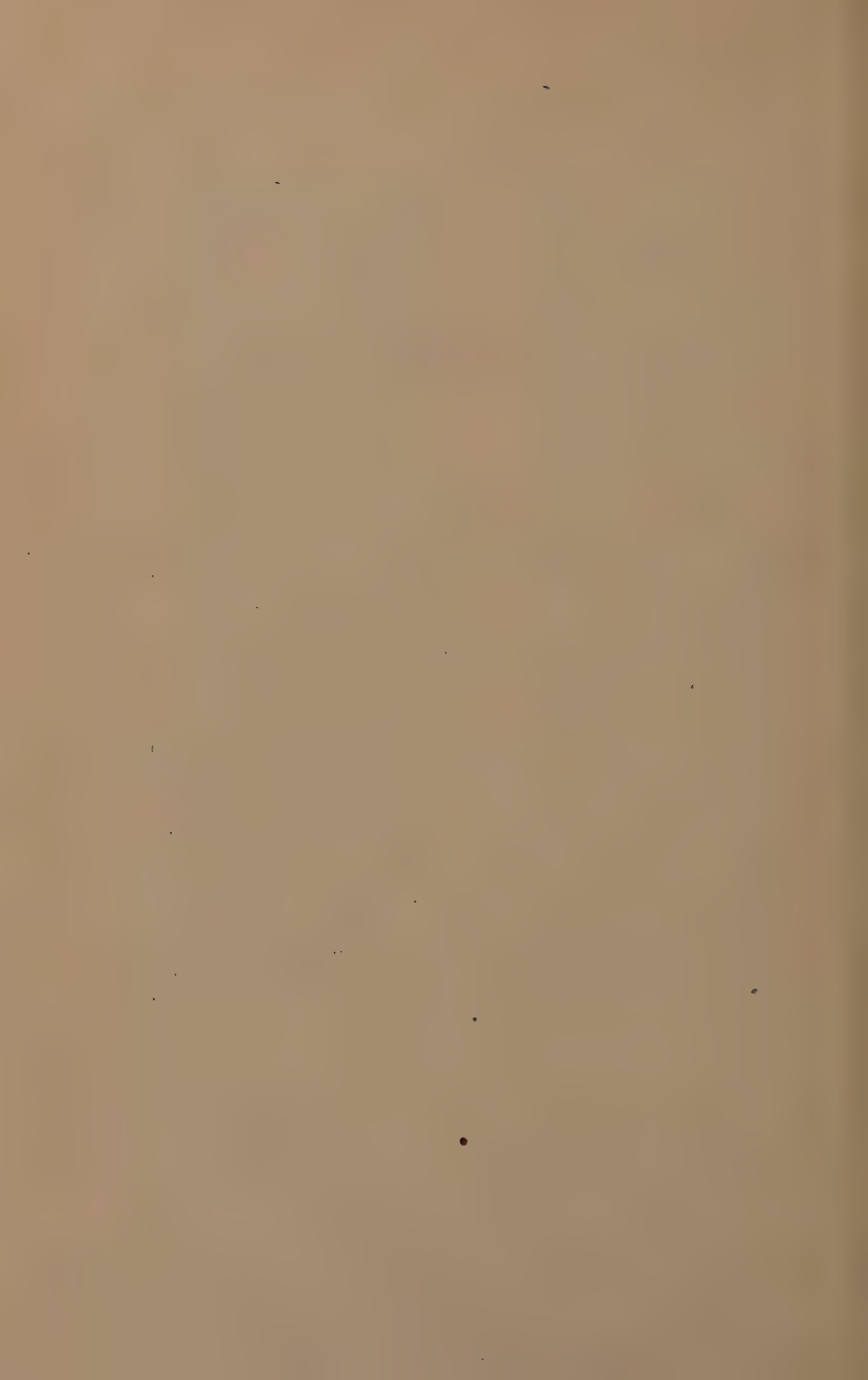


- Villa, Francisco, Mexican general, 493-496, 499, 500, 503.
- Vining, John, member of first Congress, 87.
- Wadsworth, Eliot, delegate to Paris financial conference, 615-616.
- Walker, Commander William M., missions to Great Britain, France, 833.
- Walker, General Francis A., delegate to international monetary conference, 582.
- Walker, General William, 481-482.
- Walker, George, missions to Great Britain, France, Germany, 582, 820n.
- Walker, John G., mission to Ecuador, 687-689; to South America, 795-796.
- Walker, Kenneth, mission to Honduras, 800n.
- Walker, Robert J., agent of Treasury Department, 125.
- Walsh, Robert M., mission to Dominican Republic, Haiti, 450-453; to Costa Rica, 791-792.
- Walsh, Senator Thomas J., resolution concerning J. H. Russell's instructions, 804n.
- War, constitutional provision concerning, 27; debate in constitutional convention, 29, 33, 39, 49, 52; in ratifying convention, 78.
- War of 1812, see Ghent, treaty of.
- Ward, Christopher L., mission to Mexico, 727.
- Warren, Charles Beecher, member of Mexican joint commission, 505-506.
- Washington, George, despatched G. Morris, 24, 157, 166, 209-212, 219, 226, 369-371; Humphreys, 132n, 209-212, 316-317, 695-696; agents to Barbary states, 181, 235, 249, 250, 621; other agents, 527, 768-772; relation to Senate and foreign affairs, 42, 59-60, 85, 89, 97-105, 111-114, 130, 182-184, 229, 236-237, 264n, 620, 700.
- Watterson, Harvey M., mission to Argentina, 791n.
- Webster, Daniel, opinion concerning agents, 254, 260-261, 265; relation to Japan, 355; to Santo Domingo, 450-451; to Hungary, 464, 725-726; to Latin America, 639-642, 791-792; to Canada, 746; to Great Britain, 808-810.
- Weed, Thurlow, missions to Great Britain, France, 169, 776-778.
- Welles, Sumner, commissioner to Dominican Republic, 513-516; delegate to Central American conference, 516; mission to Honduras, 516-517.
- West, Duval, mission to Mexico, 500-501.
- West Indies, mission of Cookendorfer, 560n; of Dent, 836; of Fishback, 836; of Broadhead, Tuck, 837.
- Wheaton, Henry, chargé to Denmark, 626; minister to Prussia, 647.
- Wheeler, John H., minister to Nicaragua, 481-482.
- White, Andrew D., delegate to Hague conference, 576; commissioner to Dominican Republic, 685; mission to Saxony, 764.
- White, Henry, delegate to Algeciras conference, 308, 589-590; to international conference on agricultural institute, 589n; to Pan-American conference, 601; mission to San Marino, 365; to Great Britain, 765; to Chile, 766; to Denmark, 794n; member of Paris peace commission, 401.
- White, William Allen, delegate to Prinkipo conference, 522-523.
- Whiting, mission to Great Britain, 751n.
- Whitridge, Frederick W., mission to Spain, 195, 825.
- Wickliffe, Charles A., mission to Texas, 713-714, 717-719, 723, 775.
- Wilkinson, James C., missions to Cuba, Florida, 530-533.



- Williams, George G., member of British joint high commission, 288.
- Williamson, Hugh, member of constitutional convention, 51, 56, 57.
- Wilson, George G., delegate to London naval conference, 587.
- Wilson, Henry Lane, minister to Mexico, 488, 819; delegate to international conference on maritime law, 589n; mission to Belgium, 825.
- Wilson, James, member of Continental Congress, 16-17; of constitutional convention, 35-40, 51-53, 56-57; of Pennsylvania ratifying convention, 59, 82-83.
- Wilson, Woodrow, relation to Russia, 106, 205, 518, 520-523; to Great War, 116, 154-155, 175-176, 376, 378-379, 401, 470, 593-595, 779n; to international conferences and expositions, 138-139, 145, 607, 608, 609, 614; to Mexico, 205, 309, 488-492, 494, 500-501, 504, 819; to Europe, 205, 805; to Dominican Republic, 802.
- Windom, Senator William, resolutions concerning negotiating of treaty with Corea, 276.
- Wines, Enock C., delegate to international prison congress, 583.
- Wise, Tully R., mission to Cuba, 559-560, 708.
- Wolcott, Senator Edward O., missions to Great Britain, France, Germany, 797.
- Wolfram, C. P., mission to Germany, 826.
- Wood, Arthur B., mission to Europe, 836.
- Wood, Major General Leonard, mission to Argentina, 766.
- Woodbury, Levi, opinion concerning use of agents, 206, 260, 262, 264, 336.
- Woods, Albert F., delegate to international conference on agricultural institute, 589n.
- Works, Senator John D., resolution concerning agents, 310.
- Worthington, William G. D., mission to Argentina, Chile, Peru, 415, 420-421.
- Wright, Hamilton, member of international opium commission, 607.
- Wright, Joseph A., delegate to Berlin exhibition, 612.
- Wyer, Edward, mission to Turkey, 330, 705, 706; to Santo Domingo, 432-433; to Cuba, 556.
- Wythe, George, member of Continental Congress, 14.
- Wyvell, Manton W., mission to Great Britain, 829.
- Yeaman, George H., minister to Denmark, 735, 793.
- Yell, Archibald, mission to Texas, 791.
- Young, Edward, delegate to international statistical congress, 578.
- Young, Evan E., mission to Esthonia, Latvia, Lithuania, 469.
- Young, Owen D., in London during reparation conference, 616.
- Yznardi, Joseph M., mission to Cuba, 529.







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